SUPREME COURT OF THE UNITED STATES.

No. 176.

JOSE MARIA ALVISO, CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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1 *Transcript of the proceedings in case No.* 141, *Maria Alvisu claimant, vs. The United States, defendants, for the place named Las Milpitas.*

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this thirtieth day of March, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Jose Maria Alvisu, for the place named Milpitus, was presented and ordered to be filed and docketed with No. 141, and is as follows, to wit:

(Vide page 5 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

Index to proceedings before board of land commissioners.

SAN FRANCISCO, *July* 15*th*, 1852.

In case No. 141, Jose Maria Alvisu, Las Milpitas, the deposition of Alexander Frobes, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed, and is in the words and

4 figures as follows, to wit:

(Vide page 7 of this transcript.)

LOS ANGELES, *Sept'r* 3*d*, 1862.

In case No. 141, Jose Ma. Alvisu, for the place called Milpitas, the parties litigant filed the following stipulation relative to placing this case on the trial docket, to wit:

(Vide page 39 of this transcript.)

LOS ANGELES, *Sept'r* 3*d*, 1852.

The following case was ordered to be placed on the trial docket subject to the stipulation filed by the parties litigant, to wit, No. 141.

(Vide page 39 of this transcript.)

LOS ANGELES, *Sept'r* 28*th*, 1853.

In this case, No. 141, the counsel for the claimant filed the following motion, to wit:

(Vide page (see below) of this transcript.)

SAN FRANCISCO, *Feb'y* 14*th*, 1853.

On motion of the U. States associate law agent, ordered that the following case be placed on the trial docket, to wit: No. 141, Jose Maria Alviso, Milpitas.

SAN FRANCISCO, *Feb'y 14th*, 1853.

Case No. 142, Jose Maria Alvisu, for the place named Las Milpitas, called. The counsel for the claimant, Mr. Halleck, read the petition and the papers in evidence. The United States associate law agent filed his brief. Case submitted and taken under advisement by the board.

SAN FRANCISCO, *March 8th*, 1854.

In case No. 141, Jose Maria Alvisu, for the place named Las Milpitas, the counsel for the claimant filed the following stipulation, to wit:

(Vide page 39 of this transcript.)

SAN FRANCISCO, *March 14th*, 1853.

In case No. 141, Jose Maria Alvisu, for the place named Las Milpitas, Commissioner Hiland Hall delivered the opinion and the decree of final confirmation of this board.

Ordered, that the opinion and decree of final confirmation of this board, delivered this day in this case, be recorded on the journal, which opinion and decree are in the words and figures as follows, to wit:

(Vide page 41 of this transcript.)

6 *Petition.*

To the honorable commissioners to settle private land claims in California:

The petitioner, Jose Maria Alvisu, respectfully shows that on the 1st day of March, A. D. 1830, he applied for permission to occupy the place called Milpitas, in the then jurisdiction of San Jose, and now county of Santa Clara, which was granted to him.

That his claim was afterwards submitted by the governor to the subordinate authorities and received their favorable reports.

That on the 23d day of September, A. D. 1835, Jose Castro, governor ad interim of California, by virtne of authority in him vested, granted to the petitioner the aforesaid tract of land, containing one square league, with the boundaries described in the title papers and map.

That the said grant was submitted to the deputation of California, which body, on the 25th day of September, A. D. 1835, passed it to the committee on vacant lands.

That on the 26th day of September, A. D. 1835, the aforesaid committee approved the said grant, and that on the same day it
7 was approved by the most excellent deputation; all of which is shown by the original espediente, a copy of which is submitted herewith, marked "A," with a translation, marked "B."

That on the 28th of September and the 2d of October, A. D. 1835, formal title for the aforesaid tract of land, containing one square

league, were issued by the said Jose Castro to the petitioner, copies of which are submitted herewith, marked "C," with translations, marked "D."

That the aforesaid titles were recorded at the time in the proper book of records, as shown by an authenticated copy of the record submitted herewith, marked "E," with a translation, marked "F."

The petitioner further shows that since the 1st day of March, 1830, he has been, and now is, in the quiet, peaceful, and undisputed possession of the aforesaid tract of land.

That it has not been surveyed by the surveyor general of the U. S., but that its boundaries are fully defined in the title papers and well known, and have been verified by the county surveyor of Santa Clara county.

That he knows of no conflicting claim.

That he relies for confirmation of title upon the original
8 papers, copies of which are submitted herewith, upon the minutes and records in the government archives, now in charge of the surveyor general, and upon such other and further proofs as he may be advised are necessary.

Wherefore he prays the commissioners to confirm to him the aforesaid tract of land.

By his attorneys,

HALLECK, PEACHY & BILLINGS.

Filed in office, March 30th, 1852.

GEO. FISHER, *Sec'y.*

Dep. of James Alex'r Forbes.

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS, *San Francisco, July 16th,* 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, came James Alexander Forbes, a witness produced in behalf of the claimant, Jose Maria Alviso, being No. 141 on the docket of the commissioners, and being duly sworn, testified as follows:

The United States law agent was notified and attended.

1st question. What is your name, age, and place of resi-
9 dence?

Answer. My name is James Alexander Forbes; my age is 47 years; I reside in Santa Clara, and have resided in California 23 years.

2d question. Are you acquainted with the signatures of Juan Alvires, Jose Figueroa, Augustin V. Zamorano, Salvio Pacheco, Friar Rafael de Jesus Moreno, Antonio Maria Pico, Jose Maria Gonzalez, Jose Z. Fernandez, Juan B. Alvarado, and Jose Castro? and if so, say whether their signatures to the documents before you, marked "H," are genuine, and whether the documents are genuine and originals.

Answer. I am well acquainted with the signatures of Juan Alvires,

Jose Figueroa, Augustin V. Zamorano, Salvio Pacheco, Friar Rafael de Jesus Moreno, Antonio Maria Pico, Jose Maria Gonzalez, Jose L. Fernandez, Juan B. Alvarado, and Jose Castro, having seen them write. Their signatures to the documents before me are genuine, and the documents are genuine and originals; the map in the expediente was made by me at the time the expediente was found, and the land asked for by the claimant; it correctly represents the land described in the grant; the land described in this map or
10 sketch contains about one square league.

3d question. What do you know about the possession and occupation of this tract of land by the claimant?

Answer. I know of my own personal knowledge that the claimant, Jose Maria Alviso, has been in the occupation and possession of this tract of land 20 years without interruption, he having had a house on the land all that time, and having lived on it with his family for 20 years; he has constantly occupied it with horses and cattle, and cultivated portions of the land. He still occupies it, and has several houses on it.

4th. Examine these title papers now before you, and say whether, by the usages and customs of the country, they are good and valid titles.

Answer. They are in conformity to usage and customs.

5th. Did you know of these papers during their progress and execution?

Answer. I was acquainted with these papers during their progress and execution at their several dates between the years 1830 and 1835.

11 In answer to interrogatories propounded by the U. S. law agent deponent saith that the quantity of land generally cultivated and enclosed by Alviso never exceeded fifty or sixty acres, and that his cattle were lately of the number of three thousand head; that the usage and custom expressed above mean that Alviso's title was according to the other grants of land made in California.

JAS. ALEX. FORBES.

Subscribed and sworn before me July 16th.

HILAND HALL, *Comm'r.*

Filed in office July 17th, 1852.

GEO. FISHER, *Secretary.*

12 A.—*Expediente exhibit annexed to the dep. of Jas. Alex. Forbes.*

Espediente promovido por el ciud'o Jose Ma. Alvisu, en solicitud del parage del Milpitas.

Jurisdiccion de Sn. Jose Guadalupe, ano de 1834.

Espediente sobre el parage nombrado Milpitas, solicitado por el c'no Jose Maria Alvisu.

Sello tercero. [Seal.] Dos reales.

Para los anos de mil ochocientos veinte y seis y ochosientos veinte y siete.

Sor gefe sup'or politico:

El ciudadano Jose Ma. Alviso ante V. S. como mas haya lugar en derecho se presente y espona, y posee el numero de seiscientos cabezas de ganado mayor y una manada de treinta y leguas; cuyos bienes he mantenido desde el mes de Marzo del ano de 1830; en un terreno perteneciente a la jurisdiccion del pueblo de Sn. Jose por concesion del ayuntamiento del mismo lugar, como conste por un documento con f'ha 10 de M'zo de 1830, que con el diseno del citado
13 parage acompana para el fin de solicitas la concesion del referida terreno en propiedad, en las limites y espresa el diseno en atencion a mis bienes y a espresarlos y frucas que ha puesto en el repetido citio, que constan de dos casas de pared, una huerto de cuenta arboles frutales, una vina de seiscientos copas y demas tierras cercaca y cultivadas para mis siembras de trigo. Por tanto A. V. S. rendidamente suplico se digne de prover como elevo pedido, jurando no ser de malicia que es gracias D. Mision de Santa Clara, y Nov'bre 1 de 1834.

JOSE MA ALVISU.

Monterey, Nov'e 29, de 1834.

De conformidad con las leyes de la materia informe el ayuntamienta del pueblo de San Jose Guadalupe si el contenido en esta instancia obtiene los requisitos prevenidos para ser atendido en la solicitud, si el terreno q. pretende esta comprendido en las 20 leguas limitrofes o diez litorales q. espresa la ley de 18 de Agosto de 1824, si es
14 de regordio temporal o abrevadero; si pertenece a la propiedad de algun particular mision, corporacion, o pueblo, con todo lo demas que crea conducente a ilustra la materia evacuado que sea parada el expediente a los R. P. Ministros de la Mison de Santa Clara y de San Jose, para que espongan lo que les ocurra sobre el particular. El Sor. Don Jose Higueroa, general de brigada, comandante general y inspector y gefe politica de la Alta California, asi lo mando decreto y firma de que doy fee.

JOSE FIGUEROA.
AGUSTIN V. ZAMORANO.

En cumplimiento del superior decreto que antecede q'l el interesado es c'o del pais p'r nacimiento casado con sobrados bienes de campo pa. obtener citio el terreno q. pretende no esta comprendido en las 20 leguas limitrofes y si a las 5 litorales, q. espresa la ley de 18 de Agosto de 1824, es de regadillo temporal y abrevadero, esta en egidos de esta poblacion, sa lindero mas proviene dista mas o menos dos leguas y es cuanto ocurre ha este ayuntamiento pasar por informe.

Pueblo de S'n Jose Guadalupe, D'bre 16 de 1834.

15 REGIDOR DECANO.
MARCESMO MARTINEZ.

SALVIO PACHECO, *S'rio.*

Sor gefe superior politico:

El terreno que en este espediente se solicita no me parece ser compendido en la ley de 18 de Agosto de 1824; ni tampoco, pertenece a la propiedad de algun particular o corporacion; si es de regadio o temporal, si tiene o no abrevaderos no puedo asegurarlo; por si que q'a to solicita es digno de de el.

Sn. Jose, y D'bre 27 de 1834.

FRAN. F. MARIA Y JESUS GOMEZ.

Sello tercero. [SEAL.] Dos reales.

Para los anos de mil ochocientos veinte y seis, y mil ochocientos veinte y siete.

[SEAL.] S'TA CLARA, *D'bre* 23 *de* 1834.

El sitio o el rancho que el interesade pretende no pertenece a esta mision, segun estos infortunados se lo puede decir que el sujeto es digo de lo que pretende.

FR. RAF. DE JESUS MORENO.

MONTEREY, *Julio* 14 *de* 1835.

Pase el alcalde de S'n Jose Guadalupe auto que la parte de Jose
16 Maria Alviso producira una informacion de tres testigos idoneos que seran enterrogados sobre los puntos siguientes: Primero. Si el solicitante es ciud'o Mejicano pr. nacim'to, si es casado y tiene hijos, si es de buena conducta, si de regadio temporal o abrevadero y que estencion tendra, tercero si tiene bienes de campo con que poblarlo o posibilidad de adquirirlos. Evacuadas estas diligencias, buelna el espediente para su resolucion.

El Sor Don Jose Higueroa, general de brigada, comand'te general inspector y gefe politico del territorio de la Alta California, asi lo mando decreto y firmo de que doy fe.

JOSE FIGUEROA.

F'CO DEL CASTILLO NEGRETE, *S'rio.*

El——

Sello 4o. Una quartilla.

Habilitado provicionalmente por la republica Mejicana para los anos de 1827 y 1828.

——en el territorio de los California.

ECVEAUDIA.
MARTINEZ.

El ciudadano Jose Ma. Albisu, se presenta a V. haciendole presente que teniendo como docientas cabezas de ganado bacuno una
17 manada, con treinta caballos mansos y cuyos bienes se les pierden y estravian por falta de sitio.

Suplico por tanto, con todo reno's me conceda el parage o sitio de las Milpitas, que es endonde siembro el ay'o, Ignacio Figueroa, de cuya gracia quedara agraciado, S. S. S.

Mision de S'ta Clara, 1 de Mayo de 1830.

JOSE MA. ALBISU.

PUEBLO DE S'N JOSE GUADALUPE.

Consedo a la precente instancia, el paraje que solicita en la inteligencia de no perjudicar su colindante.

GUARES.

Sr. Alcalde const'l del pueblo de San Jose, ciud'o Juan Albisu.

(Here follows map, page 17.)

19 Sello tercero. Dos reales.

Habilitlado provicionalmente por la administracion de la aduana maritima de Monterey, para los anos de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGEROA.
RAFAEL GOMEZ.

Ciudadano Antonio Maria Pico, alcalde constitucional del Pueblo de S'n Jose de Guadalupe, actuando per receptoria con dos testigos de asistencia a falta de escribano publico.

En cumplimento del superior decreto de 14 de Julio proximo pasado para que se reciba informacion de tres testigos presentados por la parte del C. Jose Maria Albisu, prosedace por mi a venficarle senalandose para ello, el proximo lues diez y siete del corriente, haciendose saber al citado Albisu para que presente en este juzgado a los sujetos que tengan los requisitos de la ley; asi lo provei mande y firme por este auto, con los de mi ass'a.

ANTONIO MA. PICO.

Asistencia: GABRIEL DE LA TORRE.
JOSE Z. HERNANDEZ.

En el Pueblo de S'n Jose Guadalupe a los diez a siete dias del mes de Agosto del ano de mil ochocientos treinta y cinco, presente
20 el ciud'o Maria Alviso, por testigo el ciud'o Sebastian Peralta en su persona que conozco y respetado por hombre idoneo le recibi juramento que higo por Dios nuestro senor y la senal de la Sta. Cruz de decir verdad en lo que selo interrogase o hayiendolo sido sobre su nombre estado y ejercicio; dijo; llamarse Sebastian Peralta, de estado casado con D'a Maria Gregoria Cibrian, de oficio labrador.

Preguntado; si el C. Jose Maria Alviso es ciudadano Mejicano por nacimiento, si es casado tiene hijos y es de buena conducta? Dijo que el repetido Alviso ha sido que es reputado en todas partes por

Mejicano de nacimiento, que es casado [casado] con Mejicana llamala Dona Juana Galinda que tiene hijos Mejicanos bastantes, y que jamas a dado nota de su persona, pues siempre se ha reputado per hombre de bien.

Preguntado; si el terreno conocido con el nombre de las Milpitas que pretende Alviso, pertenece alguna persona, mision, pueblo o corporacion, si es de regadio, temporal o abrevadero, y que estencion tendra. Dijo que el terreno porque se la pregunta no pertenece, a mision pueblo ni corporacion alguna pues sololo ha ocupado el
21 citado Alviso y no otro particular; que es de regadio y tendra una legua poco mas o menos por cada vicente.

Pregantantado; si el referido Alviso tiene bienes de campo con que poblar dicho terreno; o posibilidad de adquerirlos? Dijo que tiene suficientes bienes de campo con que poblar el terreno mencionado, como defacto yo le tiene poblado asi de——

Sello tercero. Dos reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, para los anos de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUEROA.
RAFAEL GONZALES.

——de ganado mayor como de menos; que es cuanto puede manifistar en cumplimiento las preguntas que se le han hecho y habiendo manifistando que las generales de la ley no le tocan, no firman por no saber; lo verifico el referido alcalde con los de su asistencia.

ANTONIO MA. PICO.

Assa. GABRIEL DE LA TORRE.
JOSE Z. HERNANDEZ.

En el mismo dia mes y ano, presente la parte de C. Jose
22 Maria Alviso, por testigo al C. Jose Pinto, en su persona que nonozco y reputado por hombre de bien, le recibi juramento que hizo por dios nuestro senor y la senal de la Sta. Cruz decir vedad en lo que se le interogare, y habiendolo sido sabre su*

[SEAL.] Sello tercero. Dos reales.

Para los anos de mil ochocientos veinte y seis y mil ochocientos veinte y siete.

*sobre su nombre, estado y ejercicio dijo llamarse Jose Pinto, casado con Dona Maria Cecilia Amesquita, de oficio faronero.

[SEAL.] Preguntado, si el C. Jose Ma. Alviso es Mejicano por nacimiento, si es casado, tiene hijos y es de buena conducta? Dijo; que el referido Alviso ha sido y es reputado en todas partes por Mejicano que es casado con Dona Juana Galindo; tiene hijos Mejicanos y que jamas a dado nota de su persona, pues siempre se ha tenido por hombre de bien.

Preguntado; si el terreno conocido con el nombre de las Milpitas, que pretende Alviso corresponde a algun particular, mision,
23 pueblo o corporacion, si es de regadio, temporal o abrevadero y que estencion tendra? Dijo que el terreno por que se le pregunta ne es de mision, pueblo, ni corporacion alguna, pues redidamente Alviso; que es de regadio y tendra una legua poco mas o menos por cada veinte.

Preguntado si el dicho Alviso, tiene bienes de campo con que poblar el terreno mencionado o posibilidad de adquirirlos? Dijo que tiene suficientes bienes de campo con que poblar aquel citio, como de facto ya lo tiene poblado asi de ganado mayor como de menor? Que es cuanto puede manifestar en cumplimiento de las preguntas que se le han hicho; en las que se le han hicho, y ratificado leido que les fueron y habiendo manifestado que los generales de la ley no le tocan. Dijo ser de cincuenta anos de edad no firmando por no saber, verificandolo el citado alcalde con los de mi asistencia.

ANTONIO MA. PICO.

Assa: GABRIEL DE LA TORRE.
JOSE Z. FERNANDEZ.

Inmediatamente presento el C. Jose Alviso a Francisco Pacheco por testigo idoneo, en mi persona que conozco, le recibi juramento
24 por dios nuestro senor y la senal de la Sta. Cruz, de decir verdad en lo que se le interogare y habiendo lo sido sobre su nombre, estado y oficio dijo; llamarse Francisco Pacheco casado con Dona Paula Sepulveda y de oficio labrador. Preguntado, si el C. Jose Maria Alviso es ——

Sello tercero. Dos reales.

Para los anos de mil ochocientos treinta y seis y mil ochocientos veinte y siete.

——y Mejicano por nacimiento, si es casdo, tiene hijos y es de buena conducta? Dijo que Alviso es sin duda Mejicano de nacimiento cusado con Mejicana Dona Juana Galindo, que de este matrimonio tiene cuatro o cinco hijos y que jamas a dado vido decir nada contra su buena conducta y fama pues siempre ha sido respetado y honorado.

Preguntado si el terreno conocido con el nombre de las Milpitas, que pretende Alviso, es de algun particular, mision, pueblo o corporacion, si es de ragadio, temporal o abrevadero y que estencion tendra? Dijo, que el terreno por que se le pregunta no sabe pertenece, a mision, pueblo o corporacion alguna; pues solo Alviso lo ha
25 posede sin contradicciones de ninguna persona ——

Sello cuarto. Una cuartilla.

Habilitado provincionalmente por la aduana maritima del puerto de Monterey de la Alta California para los anos de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

FIGUEROA.
A. RAMIREZ.

—— que es de regadio y tendra cosa de una legua, per cada veinte. Preguntado, si dicho Alviso tiene bienes de campo con que poblar aquel terreno o posibilidad de adquirirlos? Dijo que es publico y notoria los bienes de compo que posee Alviso conque tiene poblado el sitio que se menciona asi de ganado mayor como de menos; que es cuanto puede manifestar en cumplimiento de las preguntas quel se le han hecho; y habiendo manifestado que los generales de la ley no le tocan. Dijo ser de edad de veinte y nueve anos no firmando por no saber y lo verifico el sitado alcalde con los de su ass'a.

ANTONIO MA OSIO.

Ass'a: GABRIEL DE LA TORRE.
Ass'a: JOSE Z. FERNANDEZ.

26 En seguida hice saber o la parte del C. Jose Ma. Alviso que habiendose contendido de este juzgado el papel del sello tercero estaba en obligacion para no demorar su asento, de al mandar o presentar estas dilijencias el senor gefe superior politico en la ciudad de Monterey, a satisfecha de la administracion de la aduana tres reales y medio que hay de dilijencia con el valor de este pliego al en que debia haberse continuado estas actuaciones para que sea habilitado como corresponde; y habiendo protestado hacerlo asi lo ponge por diligencia de que doy fe con los de mi asistencia.

ANTONIO MA. PICO.

Ass'a: GABRIEL DE LA TORRE.
Ass'a: JOSE Z. FERNANDEZ.

Sello cuarto. Una cuartilla.

Incontinenti habiendose recibido la informacion ——
Habilitado provicionalmente por la administracion de la aduana maritima de Monterey de la Alta California para los anos de mil ochocientos treinta y cuatro y mil ochocientos treinte y cinco.

FIGUEROA.
A. RAMIREZ.

—— de los tres testigos presentados por el C. Jose Ma. Alviso,
27 evacuados los tres puntos que demarca al superior decreto de catorce del proximo pasado yo el alcalde constitucional del Pueblo de S'n Jose de Guadalupe, actuando por receptoria con los testigos de asistencia a falta de escribano publico, despues de derobriese este espediente cerrado al senor gefe superior politico, con obedecimiento del repetido decreto; lo asi lo verifique hoy veinte y tres de Agosto de mil ochocientos treinta y cinco.

ANTONIO MA PICO.

Ass'a: GABRIEL DE LA TORRE.
Ass'a: JOSE Z. FERNANDEZ.

Sello tercero. Dos reales.

Habilitado provicionalmente por la administracion de la aduna maritima de Monterey de la Alta California para los anos de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

CASTRO.
ANGEL RAMIREZ.

MONTEREY, *S'bre* 23 *de* 1835.

Vista la peticion con que da principio este espediente el informe se de la autoridad municipal de esta capital la esposicion de los
28 testigos con todo lo demas que se tubo presente y ver combino de conformidad con lo dispuesto pr. las leyes y reglamentos de la materia, se declaro a Jose Maria Alviso, dueno en propiedad del terreno conocido con el nombre de Milpitas, sujeto a las condiciones que se estipularen, briese el despacho correspondiente, tomese razon de el en el libro respectivo y direjase este espediente para la debida aprovacion de la E. diputacion territorial. El S'or Don Jese Castro, primer vocal de la E. diputacion y gefe politico superior interino de la Alta California, asi lo mando decreto y firmo con de que doy fe.

JOSE CASTRO.

Monterey, Sep'bre 25 de 1835.

En sesion de este dia se acordo pasara la comision de terrenos valdios.

CASTRO.

S'R: La comision de terrenos valdios impuesto del espediente que se mando practicar por solicitud del ciudadano Jose Ma. Alviso del paraje nombrado Milpitas y no encontrando en el objecion
29 alguna que hacer siendo en todo conforme a la ley de 18 de Agosto de 1824, como el articulo 5o del reglamento de 25 No'bre de 1828, opere a la deliberacion de V. E. la siguiente proposicion se aprueba la consesion echa al ciud'no Anto. Ma Alviso del terreno nombrado Milpitas concedido en 25 de Sep'bre de 1835, sujetantose a las condiciones que se stipularen en caso pertenesca a las ejidos del puebla de San Jose.

Monterey, 26 de Sep'bre de 1835. SALVIO PACHECO.

Queda tomada razon a f. 75.

MONTEREY, *Sep'bre* 26 *de* 1835.

En sesion de este dia, aprovo la ex'ma deputacion la proposicion antecedente, disponiendo buelve el espediente al s'r gefe politico para los fines consiguentes.

JOSE CASTRO.

JUAN B. ALVARADO, *Sep'o Secretario.*

Filed in office July 17, 1852.

GEO. FISHER, *Secretary.*

30 B.—*Translation of espediente.*

Stamp fourth. One cuartilla.

Provisionally authorized for the Mexican republic, for the years 1827 and 1828, in the Territory of Cal'a.

(Signed) ECHEANDIA.
(Signed) MARTINEZ.

Citizen Jose Ma. Alviso appears before you and makes representation that he possesses about two hundred head of neat cattle, a land of mares, with thirty tame horses, which property wanders off and is lost for want of a place.

Wherefore with all earnestness he prays that there may be granted to him the place or "sitio" of "Las Milpitas," which is where Ignacio Higuera served, for which favor he will remain grateful.

S. S. S. Mission of Santa Clara, March 1st, 1830.

To his honor the constitutional alcalde of the pueblo of S. Jose, citizen Juan Alvirez.

(Signed) JOSE MARIA ALVISO.

Marginal order on the above.

PUEBLO OF SAN JOSE, *March 10th*, 1830.

I grant to the present petition the place he asks for, with the understanding not to prejudice his colindante.

31 (Signed) ALVIREZ.

Stamp third. [Seal.] Two reals.

For the year one thousand eight hundred and twenty-six and eight hundred and twenty-seven.

To the governor:

[Stamp for the years 1828 and 1829. Citizen Jose Mario Alviso before your excellency, in the most favorable manner in law, presents himself and represents that he possesses the number of six hundred head of large cattle, and a land of thirty mares, which property since the month of March, in the year 1830, he has kept on a land belonging to the jurisdiction of the pueblo of San Jose, by grant from the ayuntamiento of that place, as appears by a document dated March 10th, 1830, which, together with the map of the place referred to, he transmits, for the purpose of soliciting the grant in fee of the aforesaid land, with the limits shown on the map, referring to his before-mentioned property, and the improvements which he has put in that place; they consist of two wall houses, an orchard of sixty fruit trees, a vineyard of six hundred vines, wheat crops, etc.

[Stamp for 1830 and '31.]

[Stamp for 1832 and '33.]

[Stamp for 1834 and '5.]

Wherefore he earnestly prays your excellency to be pleased
32 to provide as he has requested, swearing that this is not done with evil intent, that it is a favor, &c.

(Signed) JOSE MA. ALVISO.

Mision of Santa Clara, November 1st, 1834.

Marginal order on the above.

MONTEREY, *Nov. 29th*, 1834.

In conformity with the laws on the matter, let the ayuntamiento of the pueblo San Jose Guadalupe report whether the person referred to in this petition possesses the qualifications for his petition to be attended to, whether the land petitioned for is included in the 20 leagues from the boundary or the ten littoral leagues expressed in the law of August 18th, 1824, if it is irrigable, depending on the seasons, or pasture land, if it belongs to the property of any individual, mission, corporation, or pueblo, with everything else that it may think will conduce to explain the matter. This being complied with, it will pass this expediente to the rev. fathers, ministers of the missions of Santa Clara and San Jose, that they may set forth whatever they may know on the subject.

Senor Don Jose Figueroa, general of brigade of the Mexican
33 army, commanding general, inspector and political chief of Upper California, thus ordered, decreed, and signed, to which I certify.

(Signed) JOSE FIGUEROA.
(Signed) AUGUSTIN V. LAMORANA,
Secretary.

In compliance with the foregoing superior decree, I say that the person interested is a citizen of the country by birth, married, with more than the requisite quantity of property to obtain a place; the land he petitions for is not included in the twenty leagues from the boundary, but is in the ten from the sea-shore, expressed in the law of August 18th, 1824; it is irrigable, depending on the seasons, and pasture land; is within the common lands of this town; its nearest boundary is distant about two leagues, more or less. And this is all that this ayuntamiento can report.

Pueblo of San Jose de Guadalupe, December 16th, 1834.

(Signed) SALVIO PACHECO, *Secretary.*
(Signed) MAXIMO MARTINEZ.

34 *First regider.*

To the superior political chief:

It appears to me that the land potitioned for in this expediente is not included in the law of August 18th, 1824; neither does it belong to the property of any individual or corporation; I cannot certify whether it is irrigable land depending on the seasons, or if it has or has not water for cattle; but I can say that he who solicits deserves it.

San Jose, December 27th, 1834.

(Signed) FRIAS JOSE MARIA DE JESUS GONZALES.

SANTA CLARA, *Dec.* 23*d*, 1834.

The place or rancho which the person interested petitions for, does not, as I am informed, pertain to this mission. I can only say that the person deserves that which he petitions for.

(Signed) MIAO RAFAEL DE JESUS MORENO.

MONTEREY, *July* 14*th*, 1835.

Let this be referred to the alcalde of the peublo of San Jose Guadalupe, before whom the party Jose Maria Alviso will produce the deposition of three competent witnesses, who will be questioned
35 upon the following points.

First, whether the petitioner is a Mexican citizen by birth, if he is married and has children, if he is of good conduct. Second, if the land he petitions for belongs to the property of any individual, mission, town, or corporation, whether it is irrigable, depending on the seasons, or pasture land, and what its extent may be. Third, if he has property (liens de campo) sufficient to stock it, or the possibility of obtaining it. These examinations being made, let him return the expediente that it may be acted upon.

Senor Don Jose Figueroa, general of brigade, commanding general, inspector and superior political chief of Upper California, thus ordered decreed, and signed, to which I certify.

(Signed) JOSE FIGUEROA.
(Signed) FRANCISCO DEL CASTILLO NEGRETE,
Secretary.

Stamp third, two reales, provisionally qualified by the administration of the maritime custom-house of Monterey, for the years, 1834 and 1835.

(Signed) FIGUEROA.
(Signed) RAFAEL GONZALES.

36 Citizen Antonio Maria Pico, constitutional alcalde of the pueblo of San Jose de Guadalupe, acting with two assisting witnesses for want of a notary public.

In compliance with the superior decree of the 14th of July last, that information be taken of three competent witnesses presented by the party citizen Jose Maria Alviso, let the verification of the same be preceeded to by me, designating Monday next, the 16th instant, and informing the said Alviso that he may present in this court the person who possesses the legal qualifications. I thus provided, ordered, and signed by this order, with those of my assistance.

(Signed) ANTONIO M'A PICO.

Ass't witness:
(S'g'd) GABRIEL DE LA TORRE.
(S'g'd) JOSE Z. FERNANDEZ.

In the peublo of San Jose Guadalupe, on the 16th day of the month of August, in the year one thousand eight hundred and thirty-five, citizen Jose Maria Alviso presented as a witness Sebastian Peralta in

person, who I know and respected, a competent person, and I received from him an oath, which he made by God our Lord and the
37 sign of the holy cross, to speak truth in all that he might be asked, and having been questioned as to his name, estate, and employment, he said he is called Sebastian Peralta, his estate, married to Dona Maria Gregoria Cibrian, by occupation a laborer.

Question. Is citizen Jose Maria Alviso a Mexican citizen by birth; is he married; has he children; and is he of good conduct?

Answer. The said Alviso has been and is in all places reputed a Mexican by birth. He is married to a Mexican called Juana Galindo; he has children enough, Mexicans; that he has never given cause for scandal, but has always been reputed a man of good character.

Question. Does the land known by the name of "Las Milpitas," which Alviso petitions for, belong to any person, mission, pueblo, or corporation; is it irrigable, depending on the seasons, or pasture land, and what may be its extent?

Answer. The land which he is questioned about does not pertain to any mission, pueblo, or corporation, for the said Alviso alone has occupied it, and no other individual; it is irrigable, and is a
38 league, more or less, in each direction.

Question. Has the aforesaid Alviso cattle with which to stock said land, or a possibility of acquiring them?

Answer. He has sufficient cattle to stock the aforesaid land, as he actually has stocked it with both large and small cattle; and this is all that he can show in compliance with questions put to him, and having shown that the legal exceptions do not affect him he did sign because he did not know how; the aforesaid alcalde verified it with those of his assistance.

(Signed) ANTONIO M'A PICO.

Ass't witness:

(S'g'd) GABRIEL DE LA TORRE.

(S'g'd) JOSE Z. FERNANDEZ.

On the same day, month, and year, the party citizen Jose Maria Alviso presented as a witneas citizen Jose Pinto in person, whom I know, and I received of him an oath, which he made by God our Lord and the sign of the holy cross, to speak truth in all that he might be asked; and being questioned as to his name, estate, and employ-
39 ment, he said that he is called Jose Pinto, is married to Dona Maria Cecilia Amesquita; by trade a soap-maker.

Question. Is citizen Jose Maria Alviso a Mexican by birth; is he married; has he children; and is his conduct good?

Answer. The aforesaid Alviso has been and is in all places reputed a Mexican citizen by birth; he is married to Dona Juana Galindo; he has children, all Mexicans; he has never given cause for scandal, for he has always been reputed a man of good character.

Question. Does the land known by the name of "Las Milpitas," which Alviso petitions for, belong to any individual, mission, pueblo,

or corporation; is it irrigable, depending on the seasons, or pasture land, and what may be its extent?

Answer. The land about which he is questioned does not belong to any mission, pueblo, or corporation, for the said Alviso only has occupied it. It is irrigable, and extends one league, more or less, in each direction.

Question. Has said Alviso cattle with which to stock the beforementioned land, or possibility of acquiring them?

Answer. He has sufficient cattle to stock that place, as he
40 at present actually has it stocked with both large and small cattle. And this is all that he can show in compliance with the question put to him, which he affirms and ratifies, they having been read to him, and having shown that the legal exceptions do not affect him. He said he was fifty years old, and did not sign because he did not know how, the aforesaid alcalde verifying it with those of his assistance.

(Signed) ANTONIO M'A PICO.

Ass't witness:
(Signed) GABRIEL DE LA TORRE.
(Signed) JOSE Z. FERNANDEZ.

Immediately afterwards citizen Jose Alviso presented Francisco Pacheco as a competent witness, whose person I know, and I took an oath from him by God our Lord and the sign of the cross, to speak truth in all that he might be asked; and being questioned as to his name, estate, and employment, he said he is named Francisco Pacheco, is married to Dona Paula Sequlveda, and by occupation a laborer.

Question. Is citizen Jose Maria Alviso a Mexican by birth; is he married; has he children, and is he of good conduct?

Answer. Alviso is without doubt a Mexican by birth, is
41 married to a Mexican named Dona Juana Galindo, and has by this marriage four or five children, and he has never heard anything against his good reputation and fame, but has always been respected for his honorable conduct.

Question. Is the land known as "Las Milpitas," which Alviso petitions for, the property of any individual, mission, pueblo, or corporation? Is it irrigable, depending on the seasons, or pasture land, and what may be its extent?

Answer. He does not know that the land about which he is questioned belongs to any mission, pueblo, or corporation, but Alviso alone has possessed it without contradiction from any person; it is irrigable, aud extends about one league in each direction.

Question. Has said Alviso cattle with which to stock that land, or possibility of acquiring them?

Answer. It is public and well known with what cattle Alviso has stocked the aforesaid place, as well large as small; and this is all he can show in answer to the questions put to him, and having showed that the legal exceptions do not affect him; he said he was

42 twenty-nine years old; not signing, as not knowing how; and the said alcalde verified it with those of his assistance.

(Signed) ANTONIO MA. PICO.

Assisting witness:

(Signed) GABRIEL DE LA TORRE.

(Signed) JOSE Z. FERNANDEZ.

In continuation, I informed the party citizen Maria Alviso that the paper of the third stamp in this juzgado having been exhausted, he would be obliged, in order not to delay his business in sending or presenting these official acts to his excellency the governor, in the capital, Monterey, to satisfy to the administration of the custom-house three and a half reals, the difference between the value of this sheet and that on which these acts ought to have been continued, that they may be authorized as they should be; and he having publicly promised to do so, I make official record of it, to which I certify, with those of my assistance.

(Signed) ANTONIO MA. PICO.

Assist. witness:

(Signed) GABRIEL DE LA TORRE.

(Signed) JOSE Y. FERNANDEZ.

In continuation, the information being taken of the three witness presented by citizen Jose Maria Alviso, and the three points
43 specified in the superior decree of the fourteenth of last month being answered, I, the constitutional alcalde of the pueblo of San Jose de Guadalupe, acting in virtue of my office, with two assisting witnesses, for want of a notary public, directed that this espediente be returned, sealed, to the governor, in obedience to the aforesaid decree, which was so done this twenty-third of August, one thousand eight hundred and thirty-five.

(Signed) ANTONIO MA. PICO.

Ass't witnesses:

(Signed) GABRIEL DE LA TORRE.

(Signed) JOSE Z. FERNANDEZ.

Stamp third—two reals. Provisionally authorized by the administration of the maritime custom-house of Monterey, of Upper California, for the years one thousand eight hundred and thirty-four and one thousand eight hundred and thirty-five.

(Signed) CASTRO.

(Signed) ANGEL RAMIREZ.

Having seen the petition with which this expediente begins, the report of the municipal authority of this capital, the depositions of witnesses, together with all other information which was pre-
44 sented and deemed proper to be seen, in conformity with that provided by the laws and regulations on the matter, Jose Ma. Alviso is declare owner in fee of the land known by the name of Milpitas, subject to the conditions which may be specified. Let the

corresponding title be issued, let note be taken in the proper book, and direct this espediente to the excellent deputation for its due approval.

Senor Don Jose Castro, first "vocal" of the excellent deputation, and superior political chief ad interim of Upper California, thus ordered, decreed and signed, to which I certify.

(Signed) JOSE CASTRO.

MONTEREY, *Sept. 25th*, 1835.

In session of this day it was ordered to be referred to the committee on vacant lands.

(Signed) CASTRO.

To his excellency:

The committee on vacant lands having examined the espediente which was ordered to be made on the petition of citizen Jose Maria Alviso for the place named "Milpitas," not finding any ob-
45 jection to make to it, being in entire conformity with the law of August 14th, 1824, and also with article 5th of the regulation of November 21st, 1828, presents, for the decision of your excellency, the following proposition: "Approved the grant made to citizen Jose Maria Alviso of the land named Milpitas, granted on the 23d of September, 1835, subject to the conditions which may be stipulated in case it pertains to the common lands of the pueblo of San Jose."

Monterey, 26th Sept. 1838.

(Signed) SALVIO PACHECO.

Note has been made on fol. 75.

MONTEREY, *Sept. 26th*, 1835.

In session of this day the most excellent deputation approved the foregoing proposition, ordering that this espediente be returned to his excellency the sup'r political chief, for the convenient purpose.

(Signed) JOSE CASTRO.

(Signed) JUAN B. ALVARADO,
Deputy Sec'y.

I certify the foregoing to be a true and correct translation from the original Spanish document on file in this office annexed to the deposition of Jas. Alexander Forbes, in case No. 141, Jose
46 Ma. Alviso.

GEO. FISHER, *Sec'y.*

Filed in office, March 30th, 1852.

GEO. FISHER, *Sec'y.*

No. 141.—*Las Milpitas grant, Jose Ma. Alviso.—Exhibit annexed to the deposition of Jas. Alex. Forbes.*

Sello primero. [Seal.] Seis pesos.

Paro los anos de mil ochocientos treinta y dos y ochocientos treinta y tres.

Jose Castro, priver vocal de la E. deputacion territorial y gefe S, politico del territory de la Alta California:

Por cuanto Jose Alviso, Mejicano p'r nacimiento ha pretendido para su beneficio particular y el de su familia el terreno conocido con el nombre de Milpitas, cuyos linderos son una legua a S. a N. y media a O. y P. practicadas previamente las diligencias y averiguaciones consernientes segun lo dispuesto p'r leyes y reglamentos, usando de las facultades que me son conferidas con el decreto de la E. deputacion territorial a veinte y seis de esta mes y ano, aprovando la concession del terreno de Milpitas al ciudadano Jose Ma. Alviso he venido en concederle a nombre de la nacion Mejicana el terreno mencionado declarandole la propiedad de el por las presentes
47 letras, sujeto a los condiciones siguientes:

1a. Que se sometera a las que estableciere el reglamento que se ha de formar pa, la distribucion de terrenos validios iq. entre tanto ni el agraciado ni sus erederos podran dividir ni enagenar el que se les adjudica imponer senso, vinculo, firmeza, ipoteca ni otro gravames aunque sea p'r causa piadosa ni pasar lo a manos muertas.

2a. Podra sercarlo sin perjudicar las travesais caminos y servidmbres, lo desputara libre y exclusivamente destinandole al uso o cultivo que mas le acomode p'r dentro de un ano a la f. mas fabricara casa y estara habitada.

3. Solicitara del juez respectivo que le de le posesion juridica en virtud de esta despacho, p'r el cual se demarcaran los linderos en cuyos limites, estableceran a mas de las mojoneras algusos arboles frutales o silvestres de alguna utilidad.

4. El terreno de que se hace mencion es de una legua o latitud y media de longitud que, equibale a medio sitio de ganado mayor, segun esplica el diseno que corre en el espediente. El juez que diere la posicion lo hara medir conforme a ordenanza quedando el sobrante

Dias 20 ps.

48 a favor de la nacion pa. los usos convenientes.

5. Si contraveniese a estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consequencia mando que teniendose del titude el presents y teniendose p'r firme y valedero, se tome razon de el en el libro respectivo que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Menterey a viente y siete de Setiembre de mil ochocientos treinta y cinco.

JOSE CASTRO.

F'co del Castillo Negrete, *Secretario.*

Queda tomada razon a fojas sesenta y sinco y senalado con el no. sesenta y tres en el libro que corresponde que obra en la secretaria de mi cargo.

Monterey, 28 de Setiembre de 1835.

CASTILLO, *S'rio.*

Dias 10 ps.

Sella tercero. Dos reales.

Habilitado provicional mente por la administracion de la aduana maritima de Monterey de la Alta California, para los anos de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

CASTRO.
ANGEL RAMIREZ.

[Place of seal.] Por cuanto Jose Maria Alviso, Mejicano p'r nacimiento, ha pretendido se le aumente del terreno consedido en veinte y ocho de F'b'ro, pp'os, he venido en uso a las facultades que me son confiadas en aumentarle media legua de longitud asi al poniente; que con este aumento queda el terreno de Milpitas con la estencion de un citio de ganado mayor. El S'or D'n Jose Castro, primer vor cal de la E. deputacion territorial y gefe S. politico interino del teritorio de la Alta California, asi lo mando, decreto y firmo, de que doy fe.

JOSE CASTRO.

FRAN'CO DEL CASTILLO NEGRETE, *Secretario.*

Filed in office July 17, 1852.

GEO. FISHER, *Sec y.*

[Here follows map, page 49.]

51 E.—*Copy of record—title.*

1 S. D. K.

Jose Castro, primer vocal de la E. diputacion territorial y gefe superior politico interino territorio de la Alta California: N. 73. Por cuanto Jose M'a Alviso, Mejicano p'r nacimiento ha facultado pa. su beneficio personal y el de su familia el terreno conocido con el nombre de Milpitas cuyos linderos son una legua de S. a N. y media de O. a P. practicadas previamente las diligencias y averiguaciones conserniientes segun lo dispuesto p'r leyes y reclamentos, usando de las facultades que me son conferidas y de conformidad con lo dispuesto p'r la E. diputacion territorial en decreto de veinte y seis de este mes y ano aprovando la concesion del terreno Milpitas al c'no Jose M'a Alviso, he venido a conferirle a nombre de la nacion Mejicana el terreno mencionado declarandole la propiedad de el p'r las presentes letras y sujeto a las condiciones siguientes :

1a. Que se sometra a las que establesiese el reglamento que se ha de formar pa. la distribucion de terrenos valdios y que entre tanto ni el agraciado ni sus herederos podran dividir ni enagenar el que se les adjudica imponer censo vinculo fianza hipoleta ni otro

52 gravamen aunque sea p'r causa piadosa ni pasarlo a manos muestras.

2a. Que podra cercarlo sin perjudicar las travesias caminos y servidumbres lo disfrutara libre y exclusivamente destinandolo al uso o cultivo que mas le acomode pa. dentro de un ano a lo mas fabricara casa y estara habitada.

3d. Solicitara del juez respectivo que le posesion juridica en virtud de este despatcho p'r el cual se demarcaran los linderos en cuyos limites estableceran a mas de las mohoneras arboles frutales o silvestres de alguna utilidad.

4a. El terreno de que se hace mencion es de una legua de latidud y media de longitud que equivale a medio sitio de ganado mayor segun

2 S. D. K.

esplica el diseno que corre en el espediente. El juez que diere la posesion lo hara medir conformea ordenza quedando el sobrante a favor de la nacion pa. los usos convenientes.

5a Si contraviniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro. En consecuencia mando que teniendose p'r firme y valedero el presente titulo se tome razon de el en el libro que corresponde y se entregue al interesado para su
53 resguardo y demas fines. Dado en Monterey, a 28 de Setiembre de 1835.

JOSE CASTRO.

FRAN'CO DEL CASTILLO NEGRETE, *S'rio.*

Queda temada razon. CASTILLO.

NOTA—En 2 de O'bre del mismo ano se le aumento media legua de lonjitud pa. que formara un sitio de ganado mayor asi al poniente.

CASTILLO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory or department of [department of] Upper California, hereby certify that the two preceeding and hereunto attached pages of the tracing paper numbered one and two, and each of which is verified by my initials, (S. D. K.,) exhibit a true and accurate copy of the writing upon two pages of an unbound book, entitled "Titulos" on file and forming part of the saidarchives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal, (not having a seal of office,) at
54 the city of San Francisco, Cal., this 20th day of March, 1852.

[L. S.] SAM'L D. KING, *Sur. Gen'l Cal.*

Filed in office March 30th, 1852.

GEO. FISHER, *Sec'y*

D.—*Translation of title and increase.—Translation of exhibit annexed to the depo. of James Alex. Forbes.*

First stamp. [Seal.] Six dollars. For the year 1832 and 1833.

Jose Castro, first member of the excellent deputation territorial, and superior political chief ad interim of the territory of Upper California.

[SEAL.] Whereas, Jose Maria Alviso, a Mexican by birth, has, for his own personal benefit and that of his family, asked for the land known by the name of Milpitas, the boundaries of which are one league from south to north and a half a league from east to west, having previously taken the steps and made the examination concerning it according as directed by the laws and regulations, using the faculties which are conferred on me, and in conformity with the decree of the most excellent deputation, of the 26th of this month and year, approving of the grant of land, the "Milpitas," to
55 citizen Jose Maria Alviso, I have conferred on him, in the name of the Mexican nation, the said land, declaring to him the ownership of it by these present letters, and subject to the following conditions:

1st. That he will submit to what may be established in the regulations which are to be formed for the distribution of vacant lands, and that in the meantime neither the grantee nor his heirs can divide or alienate what is granted to him, nor impose tax, entail, bond, or mortgage, or other incumbrance, even though it be for pious purposes, or pass it in mortmain.

2d. He may inclose it without prejudice to the crossings, roads, and servitudes, enjoy it freely acd exclusively, making such use and cultivation as may best suit him; but within one year at most he shall build a house, and it shall be inhabited.

3d. He will ask the respective magistrate to give him the judicial possession in virtue of the despatch, by whom the boundaries shall be marked out, and in their limits, besides the usual land marks, there shall be established some fruit trees or wild ones of some utility.
56 4th. The land granted is one league long and a half a league wide, equal to half a square league, as explained with map, which goes with espendiente. The magistrate who may give the juridical possession will have it measure in conformity with ordinance, leaving the overplus in favor of the nation for its convenient uses.

5th. If he shall contravene these conditions he will lose his right to the land, and it will be denouncable by another.

In consequence I order that, the present title being held as firm and valid, note be taken of it in the corresponding book, and it be given to the party interested for his security and other purposes.

Given in Monterey, Sept. 28th, 1835.

(Signed) JOSE CASTRO.

(Signed) FRANCISCO DEL CASTILLO NEGRETE, *Sec'y.*

Recorded on folio number seventy-five, and marked No. seventy-three, in the corresponding book in the secretary's office under my charge.

Monterey, Sept. 28th, 1835.

(Signed) CASTILLO, *Sec'y.*

57 Stamp third. Two reals. Provisionally authorized, &c., for the years 1834 and 1855.

MONTEREY, *Oct. 2d*, 1835.

Whereas Jose Maria Alviso, a Mexican by birth, has asked for an addition to the land granted to him on the 28th of September last, [on the 28th of September last,] I have granted to him an addition of half a league in width on the west; that with this addition the land of Milpitas will be in extent one sitio de ganado mayor, (one square league.) Citizen Jose Castro, first member of the territorial deputation, and superior political chief ad interim of the Territory of Upper California, thus ordered, decreed, and signed, of which I certify.

(Signed) JOSE CASTRO.

(Signed) FRANCISCO DEL CASTILLO NEGRETE, *Sec'y.*

I certify the foregoing to be a true and correct translation from the original Spanish document on file in this office, annexed to the deposition of James Alexander Forbes, in case No. 141, Jose Ma. Alviso.

GEO. FISHER, *Sec'y.*

58 Filed in office March 30th, 1852.

GEO. FISHER, *Sec'y.*

F.—*Translation of record of title.*

Jose Castro, first member of the excellent deputation, territorial, and governor ad interim of the Territory of Upper California.

Whereas Jose Maria Alviso, a Mexican by birth, has, for his own personal benefit and that of his family, asked for the land known by the name of Milpitas, the boundaries of which are one league from south to north, and a half a league from east to west, having previously taken the steps and made the examinations concerning it according as directed by the laws and regulations, by virtue of the powers which are conferred on me, and in conformity with the decree of the most excellent deputation of the 26th of this month and year, approving of the grant of land, the Milpitas, to citizen Jose Maria Alviso, I have conferred on him, in the name of the Mexican nation, the said land, declaring to him the ownership of it by

59 these present letters, and subject to the following conditions:

1st. That he will submit to the conditions which may be established in the regulations which are to be formed for the distribution of vacant lands, and that in the meantime neither the grantee nor his heirs can divide or alienate what is granted him, nor impose tax, entail, bond, mortgage, or other incumbrance, or pass it in mortmain.

2d. He may enclose it without prejudice to the crossings, roads, and servitudes, enjoy it freely and exclusively, making such use and cultivation as may best suit him; but within one year at most he shall build a house, and it shall be inhabited.

3d. He will ask the respective magistrate to give him the juridical possession in virtue of this patent, by whom the boundaries shall be marked out, and in their limits, besides the usual landmarks, there shall be established some fruit trees or wild ones of some utility.

4th. The land granted is one league long and half a league wide,
equal to half a square league, as explained by the map which
60 goes with the espediente. The magistrate who may give the
juridical possession will have it measured in conformity with ordinance, leaving the overplus in favor of the nation for its convenient uses.

5th. If he shall contravene these conditions he will lose his right to the land, and it will be denouncable by another.

In consequence, I order that the present title, being held as firm and valid, note be taken of it in the corresponding book, and it be given to the party interested for his security and other purposes.

Given at Monterey Sept. 28th, 1835.

(Signed) JOSE CASTRO.

(Signed) FRANCISCO DE CASTILLO NEGRETE, *Sec'y.*

Note taken of it.

(Signed) CASTILLO.

NOTE.—On the 2d of October of the same year an increase of a half a league on the west was added so as to form a square league.

(Signed) CASTILLO.

I certify the foregoing to be a true and correct translation from the authenticated fac simile copy of the Spanish document on file in the United S. surveyor gen'l's office, which fac simile copy is on file in this office, in case No. 141, Jose Maria Alviso.

GEO. FISHER, *Sec'y.*

Filed in office March 30th, 1852.

GEO. FISHER, *Sec'y.*

61 *Stipulation.*

Before the U. S. land commissioners in the claim of J. M. Alviso, No. 141.

We agree that the above-entitled cause be put on the trial docket with the stipulation which is hereby entered into, that either the law agent or the claimant may introduce further testimony previous to the argument of the case.

HALLECK, PEACH & BILLINGS,
Att'ys for Claimant.

GEO. W. COOLY, *U. S. Law Agent.*

Filed in office Sept. 3d, 1852.

GEO. FISHER, *Sec'y.*

Stipulation.

No. 141, before the U. S. land commission in the claim of Jose Maria Alviso to Las Malpitas.

In this case it is agreed between the counsel of the claimant and the law agent of the United States that all the laws, decrees, ordinances, and regulations, whether of Spain or Mexico, and especially the colinization law of Mexico, passed on the 18th of August, 1824, and the regulations made by the supreme executive power
62 of Mexico on the 21st November, 1828, shall be considered as having been offered in evidence in this cause and duly proved.

HALLECK, PEACHY & BILLINGS,
Counsel for Claimant.
R. GREENHOW, *Ass't Law Agent.*

Filed in office March 8th, 1853.

GEO. FISHER, *Sec'y.*

Opinion.

No. 141, Jose Maria Alviso, claimant.

The claimant petitions this board to confirm his claim to a place called Las Milpitas, situated in the county of Santa Clara, and containing one square league.

It appears from documentary evidence that the claimant as early as the year 1830 had obtained written permission from the authorities of the pueblo of San Jose to occupy the place called Las Milpitas with cattle and horses, and that in 1834 he had erected two houses on it; had an orchard of fruit trees, a vineyard, and had lands fenced and under cultivation, and had also a stock of cattle and horses;
63 that in November, 1834, he petitioned the governor for a grant of the land he was thus occupying; and that after a reference of the petition to the ayuntamiento of San Jose, to the fathers of the missions of Santa Clara and San Jose, and the examination of witnesses, a decree was made by Jose Castro, governor ad interim, declaring the claimant, Jose Maria Alviso, to be the owner in fee of the land known by the name of Milpitas, and directing the title to be issued and the expediente to be passed to the territorial deputation for its approval.

It further appears that the expediente was submitted to the territorial deputations, and that the issuing of the title was approved by that body on the 26th of September, 1835. Two days after this approval, on the 28th of the same month, a grant was issued to the claimants, in due form, reciting the approval of the deputation and describing the land as being one league in length by half a league in breath. Four days after the issuing of this title, on the 2d of October, 1835, another title paper, less formal but duly signed by the governor and the secretary, was issued to the claimant granting him an
64 additional half a league in width by one in length on the west

of the first half league, making the whole quantity granted of the place called "Milpitas" to be one square league.

It also appears from the testimony in the case that the claimant has resided on the land with his family and been in the occupation of it, both for the purposes of cultivation and the raising of stock, for more than twenty years, and that he is still living on it.

The only objection, to which the claim seems liable, that has not heretofore been considered in the other cases and overruled, is the issuing the second grant within so short a period after the making of the first. This second grant, as well as the first, is noted on the book of titles in the public archives as having been made, and there would seem to be no question in regard to the genuineness and good faith of the proceeding.

In the petition of Alviso to the governor the quantity of land in Las Milpitas is not stated, but all of the three witnesses who were examined by the alcalde of San Jose, and whose testimony was reported to the governor, estimate the quantity to be about one square
65 league. This testimony formed a part of the espediente which was submitted to the territorial deputation, and the approval of that body would seem to authorize the governor to issue a title to to that extent.

On the whole, nothing is found in the case which would appear to justify us in refusing a confirmation of the claim to the extent of one square league, and we make a decree accordingly, Commissioner Thorton concurring in the result.

HILAND HALL.

Decree.

No. 141, Maria Alviso, claimant.

This board, on full consideration, having come to the conclusion that the claim is valid, now proceeds to make their decree of final confirmation of the same as follows, viz: It is decreed that the said claim be confirmed to the claimant to the extent and quantity of one square league [league] being the same land described in the grants to the claimants dated September 28th, and October 2d, 1825, which were proved in this case and the same land of which the possession was proved to have been long enjoyed. *Provided*, That the said quantity of one square league, now confirmed to the claimant, be con-
66 tinued within the boundaries called for the said grants and the map to which said grants refer, and if there be less than the said quantity of one square league within said bounds, then we confirm to the claimant that less quantity.

Given under our hands this 14th day of March, 1853.

HILAND HALL.

HARRY J. THORNTON, *Comm'er.*

Filed in office March 14th, 1853.

GEO. FISHER, *Sec'y.*

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing forty-four pages, numbered from 1 to 44, both inclusive, to contain a true, correct, and full transcript
67 of the record of the proceedings and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 141 on the docket of the said board, wherein Maria Alviso is the claimant against the United States for the place known by the name of Las Milpitas.

In testimony whereof, I hereunto set my hand and affixed my private seal, (not having a seal of office,) at San Francisco, California, this twenty-first day of June, A. D. 1854, and of the independence of the United States of America the seventy-eight.

GEO. FISHER, *Sec'y.*

Endorsed: Filed June 22, 1854.

JOHN A. MONROE, *Clerk*

69 *Notice to prosecute appeal.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 11th September, 1854.

JOSE MARIA ALVISO
vs.
THE UNITED STATES.

You will please take notice that in the above case decided by the commissioners to ascertain and settle private claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 10th day of June, 1854, the appeal in the District Court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed October 21st, 1854.

JOHN A. MONROE, *Clerk.*

70 *Petition.*

THE UNITED STATES, appellants,
vs.
JOSE MARIA ALVISO. } No. 37.

To the honorable District Court of the United States in and for the northern district of California:

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the

board of commissioners whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the day of ; that a notice of appeal was filed on the day of ; and that the land claimed lies in the said district; that the said claim is invalid. Wherefore appellants pray that the said decision of the board be reversed and that this court decree the said title to be invalid.

Respectfully, &c.,

A. GLASSELL, *Ass't U. S. Att'y.*

Endorsed: Filed June 27, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

71 *Motion to revive suit in name of the heirs, and stipulation.*

In the United States District Court for the northern district of California.

THE UNITED STATES, appellants,
vs.
JOSE MARIA ALVISO, appellee.
} No. 37; transcript No. 141.

Claim to "Milpitas; one square league in Santa Clara co.

On the suggestion of the death of Jose Maria Alviso, appellee in the above-entitled cause, it is moved by the United States dist. att'y for the northern district of Cal'a that the cause be revived by making Maria Juana Galindo de Alviso, widow, and Maria Josefa, Maria del Carmen, Maria Antonia, Maria Jesus, Maria Agustina, Francisco Gabriel, Juan Jose, and Maria de los Angeles, children of the said Jose Maria Alviso, deceased, parties appellees.

It is hereby stipulated and agreed between the parties in the above-entitled cause, by their att'ys, that the said Jose Maria Alviso has departed this life since the filing and decision of the
72 claim in the above-entitled cause before the board of land commissioners; that he died intestate, leaving his widow and only children, the parties named in the foregoing motion; which motion, it is further agreed, may be granted and entered up as the order of this court.

HALLECK, PEACHY & BILLINGS,
Att'ys for Appellees.
A. GLASSELL, *Asst. U. S. Dist. Att'y.*

Endorsed: Filed February 25th, 1856.

JOHN A. MONROE, *Clerk.*
By W. A. CHEVERS, *Deputy.*

73 *Answer of appellees.*

In the United States District Court for the northern district of California.

THE UNITED STATES, appellants,
vs.
JOSE MARIA ALVISO, appellee. } No. 37; transcript No. 141.

Maria Juana Galindo de Alviso, widow, and Maria Josefa, Maria del Carmen, Maria Antonia, Maria Jesus, Maria Agustina, Fracisco Gabriel, Juan Jose, and Maria de los Angeles, children of Jose Maria Alviso, deceased, appellees in the above-entitled cause, appear by their attorneys, and for answer to the petition of the United States filed herein say that their title to a certain tract of land called "Milpitas," as set forth and described in the petition of the said Jose Maria Alviso to the board of commissioners, and in the documentary and other evidence filed in this case, is a good and valid title. The land claimed is situate in the northern district of California.

And they pray this honorable court to affirm the decision of the board of commissioners and to decree their title to be
74 valid.

HALLECK, PEACHY & BILLINGS,
Att'ys for Appellees.

Endorsed: Filed February 25th, 1856.
JOHN A. MONROE, *Clerk*,
By W. A. CHEVERS, *Deputy*.

In the United States District Court for the northern district of California.

THE UNITED STATES, appellants,
vs.
JOSE MARIA ALVISO, REVIVED IN NAME OF heirs of J. M. Alviso, deceased, appellees. } No. 37; transcript from board of com'rs, No. 141.

Claim for Los Milpitas.—Stated term March 3d, 1856.

On appeal from the final decision of the board of commissioners to ascertain and settle private land claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court
75 on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved on the 3d of March, A. D., 1851, upon the transcript of the proceedings and decision of the said board of commissioners and the papers and evidence on which the said decision was founded. And it appearing to the court that the said transcript has been duly filed according to law, and counsel

for the respective parties having been heard, it is by the court hereby, ordered, adjudged, and decreed that the said decision be, and the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged, and decreed that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of one square league, being the same land described in the grants and of which the possession was proved to have been long enjoyed. *Provided*, That
76 the said quantity of one square league now confirmed to the claimants be contained within the boundaries called for in the said grants and the map to which the grants refer; and if there be less than that quantity within the said boundaries, than we confirm to the claimants that less quantity.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed March 3d, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

77 CALIFORNIA LAND CLAIMS,
Attorney General's Office, 4 *Nov'r*, 1856.

SIR: In the case of the claim of Jose Maria Alviza, confirmed to the claimant by the commissioners, case No. one hundred and forty-one, (141,) appeal will not be prosecuted by the United States.

I am respectfully,

C. CUSHING.

WM. BLANDING, Esq., *U. S. Attorney, San Francisco.*

Stipulation.

In the District Court of the United States, northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVIZA. } Case No. 37; transcript 141.

In pursuance of a notice from the Attorney General of the United States, hereunto annexed, it is hereby stipulated and agreed that no further appeal shall be taken in this case on the part of the United States, and that the claimant have leave to proceed under the
78 decree of this court heretofore rendered in his favor as under final decree.

WM. BLANDING, *Dist. Att'y.*
HALLECK, PEACHY & BILLINGS,
Att'ys for Claimant.

Endorsed: Filed December 15th, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order vacating appeal.

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the 15th day of December, in the year of our Lord one thousand eight hundred and fifty-six.

Present: the Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
JOSE MARIA ALVIZA. } Case No. 37; transcript No. 141.

79 The Attorney General of the United States having giving notice that no appeal to the Supreme Court of the United States will be prosecuted in this case, a stipulation having been entered into by the district attorney that no further appeal shall be taken on the part of the United States, and for leave to the claimant to proceed under the decree of this court heretofore rendered in his favor, on motion of the district attorney, it is ordered, adjudged, and decreed that the claimant have leave to proceed under the decree of this court, heretofore rendered in his favor, as on final decree.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed December 15th, 1856.

JOHN A. MONROE, *Clerk.*
80 By W. H. CHEVERS, *Deputy.*

Affidavit.

U. S. District Court for the northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF JOSE MARIA ALVISO. } For the rancho of Milpitas.

STATE OF CALIFORNIA, *County of San Francisco, ss:*

Horace W. Carpentier, being duly sworn, says that the grant in the above-entitled case was for one Spanish league of land in a square form, or for a tract of land "one league in longitude by one league in latitude," as appears by the papers on file in said cause, and that the final decree of this court herein was for one league of land, provided that quantity should be found within the boundaries therein mentioned; that a final survey has been made under said decree, and approved by the surveyor general for the State of California; that the tract of land embraced in said survey is not square, but very irregular in form, and contains four thousand eight hundred and
81 seven 72-100 acres, and embraces, as this deponent is informed and believes, a large tract of land not embraced within the

original grant to Jose Maria Alviso. And deponent says that said survey is erroneous.

H. W. CARPENTIER.

Sworn and subscribed before me this 28th day of December, 1859.
[SEAL.] E. P. PECKHAM, *Notary Public.*

Sworn to and subscribed this 28th Dec., 1859, before me.
W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed December 28th, 1859.
82 W. H. CHEVERS, *Clerk.*

Order to return survey.

THE UNITED STATES *vs.* HEIRS JOSE M'A ALVISO. } D. C. 37; L. C. 147. "Milpitas."

On affidavit of H. W. Carpentier, that the survey made in this case under final decree by U. S. surveyor general for California is erroneous, filed by Tully R. Wise, acting U. S. attorney, in pursuance of the rule heretofore entered, it is ordered that the said surveyor general return to this office a certified copy plat of the official survey made by him of the land finally confirmed herein.

San Francisco, Dec. 28, 1859.

W. H. CHEVERS, *Clerk.*

Served personally by copy on J. W. Mandeville, U. S. surveyor general, in the city of San Francisco, this 29th day of December, 1859.

P. L. SOLOMON, *U. S. Marshal.*
By S. LAMKIN, *Deputy.*

Endorsed: Filed December 29th, 1859.
83 W. H. CHEVERS, *Clerk.*

Petition and affidavit for return of survey.

United States District Court, northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } No. 37. For "Las Milpitas."

The petition of Nicolas Berreyesa respectfully shows that a [a] final survey has been made in the above-entitled case under the direction of the U. S. surveyor general for California; that said survey was approved by said surveyor general on the 19th day of November, 1857; that the said surveyor general has made publication that said survey has been approved by him, and that the same is now in his office,

which said publication was first made on the 26th day of September, 1860; that your petitioner is the owner of the rancho called "Las Milpitas," under title derived from the Mexican government; that the arroyo Las Milpitas, which is a deep creek, and conspicuous landmark, is the boundary between the rancho of your petitioner and the rancho confirmed to the claimant in this case; that the said approved survey includes about 1,500 or 1,800 acres of land be-
84 longing to the rancho of your said petitioner, and which never was included within the rancho claimed in this case, and that the same also includes 300 or 400 acres of land more than was confirmed to the claimants by the final decree of the court in this case, and that said survey is erroneous. Wherefore, your petitioner prays that the said survey may be ordered to be returned to this court, in order that the same may be set aside and justice done in the premises.

H. W. CARPENTIER,
Att'y for said Petitioner.

COUNTY OF SAN FRANCISCO, *ss*:

Horace W. Carpentier, being duly sworn, says that he is the attorney for Nicholas Berreyesa in this case, and that, as he is informed and believes, the facts stated in the foregoing petition are true.

H. W. CARPENTIER.

Subscribed and sworn before me this 4 Oct., 1860.
W. H. CHEVERS, *U. S. Com.*

85 Endorsed: Filed October 4, 1860.
W. H. CHEVERS, *Clerk.*

Order to return survey.

At a stated term of the District Court of the United States for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the fourth day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The Honorable Ogden Hoffman, district judge.

In land cases.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } District Court No. 37; land com. No. 141.

And now at this day, on application of H. W. Carpentier, attorney for Nicolas Berreyesa *et al.*, it is ordered that the surveyor
86 general of the United States for California return into this court on or before Wednesday, the 24 day of October, A. D. 1860, his official survey and plat of the land finally confirmed in the above-entitled cause, known as Las Milpitas, and situated in the

county of Santa Clara, in said district. And it is further ordered that the United States marshal for this district serve upon the said surveyor general without delay a certified copy of this order, and make due return hereon.

Served personally by copy on J. W. Mandeville, surveyor general for California.

San Francisco, Oct. 4th, 1860.

P. L. SOLOMON, *U. S. Marshal.*
By L. D. SOLOMON, *Deputy.*

Endorsed: Filed October 4th, 1860.

W. H. CHEVERS, *Clerk.*

87 *Monition.*

UNITED STATES OF AMERICA,
Northern District of California, ss:

The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

Whereas objection has been made to the official survey and location of the land finally confirmed in case No. 37 to Jose Maria Alviso, known as Las Milpitas, and situated in the county of Santa Clara, in said district: Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having or claiming to have an interest in such survey and location, that they be and appear before the District Court of the United States for said district, sitting in land cases, on or before Wednesday, the 24th day of October, A. D. 1860, at 11 o'clock a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there
88 to intervene for the protection of such interest, or their defaults will be taken; and what you shall have done under this writ, do you then and there make return thereon.

Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this fourth day of October, A. D. 1860.

[SEAL.] W. H. CHEVERS, *Clerk.*

The within monition was received by me on Thursday, the fourth day of October, 1860, and in obedience thereto I have given due notice as therein commanded, by causing the publication of said notice for three consecutive Wednesdays in the San Francisco Herald, commencing on the 10th day of October, 1860, and for three consecutive Saturdays in the San Jose Tribune, a paper published nearest the land, commencing on the sixth day of October, 1860.

Dated San Francisco, Oct'r 24th, 1860.

P. L. SOLOMON, *U. S. Marshal.*

Endorsed: Filed October 24th, 1860.

W. H. CHEVERS, *Clerk.*

89 *Order on return of monition.*

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 24th day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The Honorable Ogden Hoffman, district judge.

In land cases.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } District Court No. 37; land com. No. 141.

And now at this day, the United States marshal having made return upon the monition heretofore issued in this cause that he had given due notice as therein commanded, on motion of attorney for the United States proclamation was made that all parties having or claiming to have an interest in the survey and location of the land finally confirmed in the above-entitled cause appear and intervene for the protection of such interest, the U. S. attorney and John B. Williams appeared for the U. S., H. W. Carpentier ap-
90 peared in behalf of Berreyesa, Tracy, and Thurn, and for himself, and filed intervention in that behalf, no other party appearing. Whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered.

Endorsed: Filed October 24th, 1860.

W. H. CHEVERS, *Clerk.*

91 *Intervention of Carpentier et al. to survey.*

United States District Court, northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } No. 37. Las Milpitas.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

Horace W. Carpentier, being duly sworn, says that Nicolas Berreyesa, F. P. Tracy, C. Thurn, and this affiant, are the owners of the rancho known as "Las Milpitas," granted to said Nicolas Berreyesa by the Mexican government; that said rancho is bounded on the north by the rancho confirmed to the claimants in this case; that, as he is informed and believes, the arroyo Las Milpitas is the boundary between the two said ranchos; that by the final survey returned in this case a large tract of land is included therein, lying on the south side of said arroyo, and belonging to the rancho so granted to said Berreyesa, and not to the rancho confirmed in this case; that the grant and confirmation in this case is for quantity, and that said
92 survey includes a much larger quantity than was granted or confirmed to the said claimant; that this affiant is the attorney of the said Berreysea, Tracy, and Thurn; that they and this affiant are interested in the survey herein, and that the same is erroneous.

Wherefore he asks that they may be allowed to intervene for the protection of their interests in the premises.

H. W. CARPENTIER, *for said Intervenors.*

Subscribed and sworn to this 24 day of October, 1860.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed October 24th, 1860.

W. H. CHEVERS, *Clerk.*

93 *Exception of Carpentier et als. to survey.*

U. S. District Court, northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } No. 37. Los Milpitas.

On behalf of Nicolas Berreysea, Horace W. Carpentier, F. P. Tracy, and Cepriana Thurn, intervenors, the following grounds of objection to the survey are specified and assigned:

1. That the survey herein does not conform to the grant.

2. That said survey is not in accordance with the decree of confirmation.

3. That said grant and decree were for quantity; that the quantity expressed was one square league, but that said survey embraces several hundred acres of land more than one square league of Mexican measurement.

4. That said grant and confirmation was for a piece of land in a square form, with north and south, east and west boundaries, but that the survey is of an irregular tract of land with some of its sides twice as long as others with ante angles, and without any

94 regard to the points of the compass.

5. That said survey includes a large tract of land, to wit, over 1,000 acres, lying on the south side of the "arroyo de Las Milpitas," whereas said arroyo is, and ever since long before the date of the grant to the claimant herein has been the boundary between the lands and possessions of the claimant herein and of the said Nicolas Berreysea.

6. That said survey includes about 1,000 acres of land, to wit, all of the land embraced in the said survey lying to the south of said arroyo, which was never granted to or claimed by the claimant in this case, but was granted to and claimed and owned and possessed by the said Nicolas Berreyesa.

Wherefore said intervenors pray that said survey be set aside and annulled, and for an order directing the surveyor general in any future survey of said rancho to limit the same on the south by the said arroyo Milpitas, and not include more than the just quantity of one league of land.

95 H. W. CARPENTIER, *for Intervenors.*

Endorsed: Filed October 29th, 1866.

W. H. CHEVERS, *Clerk.*

[Here follows plat of survey, page 95.]

96 *Exceptions to survey by U S.*

In the District Court of the United States for the northern district of California.

THE UNITED STATES
vs.
JOSE MARIA ALVISO. } No. 37; L. C. 141.

And now come the United States by Calhoun Benham, their attorney, and except to the official survey of the land finally confirmed herein, a certified copy of the original plat whereof was filed in this court, pursuant to its order, on the 5th day of November, 1860. And the United States aver:

1. That the said survey is erroneous, because it does not conform to the calls of the final decree of confirmation.

2. That the said survey is erroneous, because the land granted and confirmed was one square league and no more, whereas the said survey includes the quantity of 4,807.72 acres.

Wherefore the United States pray that the said survey be set aside as erroneous and a new survey ordered to be made, which call include the quantity of one square league and no more, and which
97 shall conform to the true intent and meaning of the said final decree.

Dated San Francisco, Nov. 7, 1860.

CALHOUN BENHAM, *U. S. Att'y.*

Endorsed: Filed November 7, 1860.

W. H. CHEVERS, *Clerk.*

98 *Substitution of S. O. Houghton as att'y for claimants.*

In the District Court of the United States for the northern district of California.

THE UNITED STATES
vs.
JOSE MA. ALVISO, revived in the name of his widow and children. } In land com. case No. 141, and in the Dist. Court No. 37.

We hereby substitute and appoint S. O. Houghton as the attorney for the claimants in the foregoing entitled cause.

February 4th, 1861.

HALLLCK, PEACHY & BILLINGS,
Att'ys for Claimants.

Endorsed: Filed February 4th, 1861.

W. H. CHEVERS, *Clerk.*

99 *Deposition of Fran'co Alvisu.*

In the District Court of the United States for the northern district of California, in land cases.

THE UNITED STATES
vs.
WIDOW AND HEIRS OF JOSE MARIA ALVISO. } Dist. Court No. 37; land com. No. 141.

Be it remembered, that on this 23d day of April, A. D. 1861, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Francisco Alviso, a witness produced in behalf of the claimants in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by George Fisher, a sworn interpreter.

100 Present: Mr. Houghton, counsel for the claimants; Calhoun Benham, esq., U. S. att'y for U. S.

Question in behalf of the claimants.

Question 1st. What is your name, age, and place of residence?

Ans. Francisco Alviso; 67 years of age, and reside in Contra Costa county.

2. Do you know the Rancho Milpitas, in Santa Clara county? If so, how long have you known it and by whom has it been occupied?

Ans. I know said rancho; have known it more than fifteen years; don't recollect how long I have known it; I cannot recollect dates. It has been occupied by the late Jose Maria Alviso.

3. Do you know an arroyo upon said rancho formerly known by the name of the arroyo del Finado Martinez?

101 Ans. I do.

4. Are you acquainted with the boundaries of this rancho?

Ans. I am.

5. Does that rancho include that arroyo within its boundaries or not?

(Question objected to by U. S. att'y as leading, as asking the opinion of witness, and as incompetent.)

Ans. It is within the enclosure of the rancho.

6. What is the eastern boundary of said rancho?

Ans. At the foot of the hill there is a tree, where there is a small arroyo.

7. What bounds the rancho on the east side?

A. The tree of which I have already spoken, and at a little
102 distance from it there is a grove of trees, called Las Iririses.

8. Is that grove of trees known by any other name?

Ans. I don't know; I have always known it as the monte de los Iririses.

9. How far is the monte de los Iririses from the tree of which you have spoken at the foot of the hills?

Ans. About a league—less than a league.

10. Is that tree of which you have spoken on the north or south side of the arroyo del Finado Martinez?

Ans. On the north side.

11. Do you know the arroyo del Aguage.

Ans. I do.

12. Is the tree you have spoken of and the arroyo del Aguage on the same side of the arroyo del Finado Martinez, or is one on

103 one side and the other on the other?

Ans. They are both on the same side of the arroyo del Finado Martinez.

13. Are there any hills about said rancho?

Ans. There are.

14. Upon which side of the rancho are the hills?

Ans. On the east side.

15. Who occupied the land lying south of the arroya del Finado Martinez and between that arroyo and the arroyo Aguage?

Ans. The cattle of the late Jose Maria Alviso.

16. State, if you know, about what time that rancho was first founded.

Ans. When I first went there it was already founded; they had a house and corrals. It was 20-odd years ago.

104 17. Who lived there when you first went there?

Ans. Juan Antonio Fernandez and a widow woman, named Dolores Amesquita. They were taking care of it for Jose Maria Alviso.

18. Do you know upon what part of that rancho Nicolas Berreyesa lived?

Ans. He lived on the east side of the arroyo del Finado Martinez.

19. Do you know when and how he went there?

Ans. I know he went there, but don't recollect when. He went with the permission of Jose Maria Alviso.

20. Do you know of any rodeos having been made on that rancho on the side of the arroyo del Finado Martinez, upon which the house of Berreyesa stood?

Ans. I know that some rodeos were had there.

105 21. Who made those rodeos?

Ans. The late Jose Maria Alviso, with his vaqueros.

22. State, if you know, whether Nicolas Berreyesa at the time he was living on that rancho owned any horses or cattle.

Ans. He had some cattle and horses.

23. State, if you know, where he kept those horses and cattle—in the hills or upon the plain.

Ans. He kept them in the hills.

24. How far was the house in which Nicolas Berreyesa lived distant from the foot of the hills?

Ans. It might be some fifty varas.

25. State, if you know, why it was that Berreyesa kept his cattle and horses in the hills.

Ans. Because it was upon those conditions that the late
106 Jose Maria Alviso granted him permission to go upon the land that he should keep his horses and cattle in the hills, and not upon the plains.

26. State, if you know, whether, when Alviso made rodeos in the plain upon the same side of the arroyo on which Berreyesa house stood, he obtained permission from Berreyuesa or not.

Ans. He, Alviso, made rodeos about 400 varas from Berreyesa's house, on the same side as Berreyesa's house. He did not ask permission from Berreyesa, because he did not need it.

27. Do you know of any rodeos having been made upon the hills south of the arroyo del Finado Martinez and east of Berreyesa's house?

Ans. I have never seen any made there.

28. Did you ever live upon the rancho "Milpitas?" If so, when?

Ans. I did, at several times. The first time about two
107 years, and the last time about six years. I do not now recollect the dates.

29. Was it before or after the Americans took possession of California that you lived there?

Ans. Before.

30. State whether it was before or after the Americans took possession of California that these rodeos were made by Alviso, that you have spoken of.

Ans. Before.

31. Do you know whether Alviso made any rodeos there after the Americans took possession of the country?

Ans. I do not know.

32. Down to what time did Alviso continue to make rodeos at the place you have mentioned near Berreyesa's house?

108 Ans. I do not recollect the date; but two years after the discovery of gold in this country he gave a rodeo there, and I was present.

Cross-examined by the U. S. attorney.

33. What relation was the late Jose Maria Alviso to you?

Ans. He was my brother.

34. You say you are acquainted with the boundaries of the rancho claimed in this case. Describe those boundaries as they existed when you first knew it.

Ans. Beginning at a point on the other side of the arroyo, opposite Alviso house, on the side towards Higuera's house; thence towards an oak tree on the other side of the arroyo de las Milpitas; thence along said arroyo southward; thence towards the "monte de los Iririses;" thence to that little tree which was mentioned
109 in the beginning of this deposition, standing at the mouth of a little gulch; thence all along the foot of the hills to Alviso's house.

35. How did you ascertain those to be the boundaries?

Ans. Because I lived on the rancho, and I saw them measured. I don't know by whom, but I believe they were Californians. It was a long time before the Americans took possession of the country. I don't know how much land is embraced within those boundaries, but I know that Alviso petitioned for one league of land, and I believe there is a league within those boundaries.

his
FRANCISCO ⋈ ALVISO.
mark.

Sworn to and subscribed April 23, 1861, before me.
W. H. CHEVERS, *U. S. Com'm'r.*

Direct examination resumed.

36. Do you know the arroyo de la Penetencia?

110 Ans. I do. Formerly it was called the Penetencia; now they have given it the name of Milpitas. It is on the west side of the ranch.

his
FRANCISCO ⋈ ALVISO.
mark.

Sworn to and subscribed this 23 April, 1861, before me.
W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed April 24, 1861.
W. H. CHEVERS, *Clerk.*

111 *Deposition of A. M. Peralte.*

In the District Court of the United States for the northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } In land cases.—Dis't Court No. 37; land com. No. 141.

Be it remembered, that on this 1st day of Oct'r, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the Circuit Court of the United States for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Antonia Maria Peralta, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, Thomas A. Jewett, sworn as interpreter.

Present: Wm. H. Sharp, U. S. att'y, by J. B. Williams, S. O. Houghton for claimants; H. W. Carpentier for intevenors.

Questions in behalf of the United States.

Question 1st. Your name, age, and place of residence?

Ans. 1. Antonio Maria Peralta; am 59 years of age; I reside in San Antonio.

Ques. 2. State whether you know Nicolas Berreyesa, and whether you knew Jose Maria Alviso; and if so, how long have you known either of them?

Ans. 2. I know Nicholas Berreyesa and Jose Maria Alviso. Both of them are my cousins. I have known them ever since we were young.

Ques. 3. State whether you know the rancho of Milpitas confirmed to the claimants in this case; and if so, how long have you known the lands in that neighborhood?

113 Ans. 3. I know the land; I know the limits of the one and of the other; have known the lands in that neighborhood many years; have known it since about 1810 or 1815?

Ques. 4. Do you know the arroyo called Las Milpitas? If so, state where it rises and how it runs.

Ans. 4. I know the arroyo Milpitas; it commences on the top of the mountain and runs into the plain.

Qnes. 5. Do you know anything about the boundaries of the rancho of Jose Maria Alviso? If so, state what, and your means of information. You may confine your answer to the southern boundary.

Ans. 5. The southern boundary of Jose Maria Alviso is the arroyito de las Milpitas, a line from where it ends to the Penitencia. Jose Maria Alviso himself told me two or three times. These are

114 my means of information.

Ques. 6. Were you familiar with the occupation of Alviso and of Nicholas Berreyesa? If so, state whether they occupied up to some recognized boundary line between them, and what was that line.

(Question objected to as leading.)

Ans. 6. From Jose Maria Alviso I became acquainted with the boundary line that divided both ranchos. Nicholas never told me anything about it.

Ques. 7. On what occasion did Alviso ever tell you that the Arroyo Milpitas and the line as you have mentioned was the southern boundary of his rancho?

Ans. 7. I don't remember whether it was in 1838, in 1839, or in 1840; it was some time during those three years. I came from the pueblo of San Jose to his rancho; it being very warm weather, I went to his house, and it was on that occasion that he told me. In

115 those days we, the natives, were accustomed to talk of our ranchos, cows, horses, &c., just as the Americans do now-a-days of dollars.

Ques. 8. What did Jose Maria Alviso say on that occasion about the creek being his southern boundary?

(Question objected to as leading.)

Ans. 8. What I have stated; that from the arroyito to the Penetencia was his southern boundary.

Cross-examination.—Ques. by att'y for claimant.

Ques. 9. How long have you resided at San Antonio, your present place of residence?

Ans. 9. Why do you want to know how long I have lived there? I have lived there a great many years; it is not necessary for any-
116 body to ask how many years I have lived there. These are questions that have nothing to do with the case. I came to testify to what I have testified, and nothing more. Why do you ask me that question? I have lived there since 1820.

Ques. 10. Who was present beside yourself and Jose Maria Alviso at the time he gave you this information about his southern boundary line?

Ans. 10. Nobody was present. He and I were talking together alone in his own house.

Ques. 11. State what brought on this conversation between yourself and Alviso in relation to his boundary line?

Ans. 11. As I have stated before, we, the natives, were accustomed to speak of horses, cows, and ranchos just as the Americans now talk of lands and dollars.

Ques. 12. In that conversation did Alviso say anything about any of the other boundary lines of his rancho?

117 Ans. 12. No, he did not speak to me of the other boundary lines of the rancho; he only spoke to me of the boundary line of which I have testified. I only asked him in regard to the line between him and his neighbor.

Ques. 13. Had he no other neighbors at that time whose lands adjoined his rancho on the north, east, and west?

Ans. 13. On the north he had as neighbor one of the Higueras, and on the south he had Nicholas Berreyesa.

Ques. 14. Why did you only ask Alviso where his southern boundary line was?

Ans. 14. During the conversation I happened to ask him about his southern boundary line; we were talking of this, that, and the other.

Ques. 15. How do you know that this conversation took place in either of the years 1838, 1839, or 1840?

118 Ans. 15. Not remembering exactly in what year it was, I stated for that reason that this conversation took place in 1838, 1839, or 1840.

Ques. 16. Did this conversation take place before 1838?

Ans. 16. I do not remember. If I should remember I should state the day, month, and year. All I can say is that it took place before the year 1840.

Ques. 17. Did not this conversation take place since 1840?

Ans. 17. I don't remember.

Ques. 18. In what year did Nicholas Berreyesa first go to live upon the rancho Milpitas, where he now resides?

Ans. 18. I do not remember.

Ques. 19. Did he go to the line there before 1840?

119 Ans. 19. Yes. A great many years before, but I don't remember in what year.

Ques. 20. How many years before 1840 ; 5 or 10 or 20 ?

Ans. 20. I don't remember; many years before.

Ques. 21. Do you know when Nicholas Berreyesa first went to live there ?

Ans. 21. I saw him there, but I don't remember in what year he went there.

Ques. 22. Who lived at that place before Berreyesa went there, if any one ?

Ans. 22. I don't remember. It is so many years since that I don't remember.

Ques. 23. Do you know whether any one lived there before Berreyesa ?

Ans. 23. No. I don't remember. I have known those lands since I was very young.

Ques. 24. Did this conversation about Alviso's southern line
120 ever occur at all between Jose Maria Alviso and yourself ?

Ans. 24. During those three times we happened to speak of the southern line, as I have stated.

Ques. 25. What three times do you refer to in your last answer ?

Ans. 25. Those three times upon which I happened to converse with him about lands, cattle, &c.

Ques. 26. You have stated where one of these conversations occurred. At what time and place did the other two take place ?

Ans. 26. As to these I can't say. He was a relation of mine. I lived on my ranch in San Antonio, and he lived on his. I used to go very often to the pueblo of San Jose. It was very warm weather, and during these times we happened to converse on this subject. We would talk over different matters.

Ques. 26. Did either of these conversations occur before or
121 after a conversation which you say took place prior to 1840 ?

Ans. 26. I don't remember. They took place before 1840 ?

Ques. 27. Do you mean to say that all three of these conversations took place before 1840 ?

Ans. Previous to 1840.

Ques. 28. In none of these three conversations was anything said either by Alviso or yourself about any of the other lines of his rancho ?

Ans. 28. Nothing was said about any of the other lines of his rancho.

ANT'O M'A PERALTA.

Sworn and subscribed to before me this 1st day of October, A. D. 1861.

CUTLER McALLISTER,
U. S. Comm'r.

Endorsed ; Filed October 9, 1861.

W. H. CHEVERS, *Clerk.*

122 *Deposition of M. Martinez.*

In the District Court of the United States for the northern district of California, in land cases.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } Dist. Court No. 37 ; land com. No. 141.

Be it remembered, that on this 1st day of October, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the Circuit Court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Maximo Martinez, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who being duly sworn, testified as follows, Thomas A. Jewett sworn as interpreter.

123 Present: Wm. H. Sharp, U. S. att'y, by J. B. Williams, S. O. Houghton for claimant; H. W. Carpentier for intervenors.

Questions in behalf of the United States.

Question 1st. Your name, age, and place of residence ?

Ans. 1. Maximo Martinez. I am 68 years of age. I reside upon my rancho, El Carte de Madeira, in San Mateo county. Have lived upon my ranch since 1833.

Ques. 2. Do you know the place in the pueblo of San Jose called Milpitas, occupied by the families of Jose Maria Alviso and Nicholas Berreyesa ? and if so, since what year have you known said place ?

Ans. 2. I know this land. This creek was called formerly Milpitas. Higuera used to live there. He is now dead. The creek is now called Los Caches. I have known the place since I was very

124 young.

Ques. 3. Do you know the tract of land occupied by Jose Maria Alviso in his lifetime ?

Ans. 3. I know the land. I helped to found the ranch.

Ques. 4. State who was Alviso's colindante on the north, and what was their dividing lindero.

Ans. 4. Jose Higuera was his colindante on the north. Between the arroyo now called Los Caches and Jose Higuera's there is a little arroyito that runs from the hills. This was known as Alviso's boundary line. A dispute arose been Alviso and Higuera about that line. I don't know how it was settled.

Ques. 5. Who was Alviso's colindante on the south, or in the direction of the Pala, and what was the "lindero" between them ?

Ans. 5. Nicolas Berreyesa was. I know from Alviso that the arroyo of Milpitas was the boundary line between himself and

125 his colindante, Nicolas Berreyesa. I helped Alviso to found

the ranch, and through him I became acquainted with these boundaries. He told me many a time where his boundaries were.

Ques. 6. How far towards the west, or in the direction of the plain of San Jose, did Alviso occupy, and what was his lindero on that side?

Ans. 6. From the Arroyo Milpitas to a thicket (monte) called "monte de los Irrirrices" to the north point of said thicket the line runs. I learned this from Alviso himself.

Ques. 7. Describe how this monte is situated with respect to the Milpitas creek and the Penetencia creek.

Ans. 7. The Penetencia creek runs northerly west of this thicket. The Milpitas runs from the top of the mountain to this thicket. This thicket runs from the end of the Milpitas to the Penetencia,
126 and separates them.

Ques. 8. How far towards the east, or in the direction of the Sierra Madre, did Alviso occupy, and what was his lindero on that side?

Ans. 8. He occupied the land as far to the east as the "Lomas Altas."

Ques. 9. Do you mean by the "Lomas Altas" the range of high hills which bound the ranchos of Fulgencio Heguera, Jose Heguero, Jose Maria Alviso, and Nicolas Berreyesa on the east, and which range runs in the same direction with the Sierra Madre?

Ans. 9. They are the same range. The first range of hills are smaller than those further back. All these mountains or hills were occupied by Alviso with his cattle.

Ques. 10. Before the Americans occupied the country do you know of any dispute between Jose Maria Alviso and Nicolas Berreyesa with respect to the "lindero" dividing them, which you have stated
127 to be the Arroyo Milpitas?

(Question objected to as leading.)

Ans. 10. I heard of it; they both told me about it. Alviso was envious, and wanted to take more land than belonged to him, and wanted to prejudice the Berreyesa. A great many maps have been given to Alviso. Two surveys have been made, and more land have been given to Alviso. They have been taking more and more land, until they h ve almost got to the "Aguage." I don't know who have been giving him so many maps and titles.

Ques. 11. Before the Americans came here in 1846 and 1847, did the Mexican authorities allow Alviso to disturb Nicolas Berreyesa in his occupation of the land south of the Milpitas creek?

(Objected to as incompetent.)

128 Ans. I never knew that Alviso had any question before the government with relation to the boundary with Berreyesa. The dispute was between them. I know this from both of them.

Ques. 12. Then, I understand that although this dispute was between them, yet Nicolas Berreyesa always continued to occupy the land claimed by him as you have stated?

(Objected to as incompetent and leading.)

Ans. Yes; he continued to occupy the land until lately, when he was ejected; but he is still living there.

Ques. 13. Do you recollect in what year Nicolas Berreyesa first occupied the land south of Milpitas creek?

Ans. I don't remember exactly, but it was before 1833.

Ques. 14. Do you recollect in what year Alviso founded his
129 rancho?

Ans. It was before 1833.

Ques. 15. Who occupied first—Alviso on the north of the Milpitas, or Berreyesa on the south?

Ans. Alviso occupied first. Berreyesa then, with his (Alviso's) consent, asked Alviso how far his lands extended, and Alviso said as far as the Milpitas. Berreyesa wanted to know how far Alviso's lands extended, so he (Berreyesa) should not prejudice Alviso. Berreyesa then made his petition, and Alviso himself presented it to the alcalde.

Ques. 16. Why was the petition of Berreyesa presented to the alcalde?

Ans. Because Berreyesa wanted a small ranchito. He asked Alviso how far his (Alviso's) ranch extended.

Ques. 17. Did Berreyesa get his petition granted?

Ans. The ayuntamiento granted his petition, like all the
130 others. They loaned the land to him, (en calidad depressamo.) Alviso held his land by the same kind of title from the ayuntamiento before he got his grant. In 1833 Alviso asked Figueroa for a title in property like all others.

Ques. 18. How far is your rancho from the Milpitas?

Ans. I never measured it, and I cannot calculate it—it's about thirty miles.

Examination adjourned until to-morrow, Wednesday, Oct. 2d, 1861, at 10 o'clock, a. m.

SAN FRANCISCO, *Oct. 2d*, 1861, 10 *o'clock a. m.*

Examination of Maximo Martines this day continued.

Present: The same parties as on yesterday.

Cross-examination on behalf of claimant.

Ques. 19. In what year did Jose Ma. Alviso found the
131 rancho Milpitas?

Ans. I don't remember in what year. It was before the year 1833.

Ques. 20. At the time he founded the rancho had he any children?

Ans. He had children.

Ques. 21. How many years is it since you have been upon that rancho?

Ans. I don't remember the date.

Ques. 22. How long is it since the arroyo that you say was founded, formerly called Milpitas, has had its name changed to the name of arroyo de las Caches?

Ans. I have come here to testify on behalf of Mr. Carpentier. If the gentleman on the other side wants to know anything, he can bring his own witnesses. I believe he is displeased.

132 Ques. 23. How long is it since the arroyo that you say was formerly called Milpitas has had its name changed to the name of arroyo de los Coches?

Ans. I don't know when its name was changed. This is the first time that I have heard this name of Las Coches.

Ques. 24. Did you ever know of any arroya called by the name of arroyo del Finado Jose Maria Martinez?

Ans. It is the same arroyo where the Berreyesas live now. My father sowed there. That is the reason it was called Las Milpitas of the deceased Martinez.

Ques. 25. Is not the house in which Nicolas Berreyesa always lived on that rancho, near the hills, a short distance south from the arroyo del Finado Martinez?

Ans. Yes, sir; it is the same place where the house now is.

133 He built several small houses.

Ques. 26. Did he have more than one house on that land at the time the Americans took possession of California in 1846?

Ans. He had more than one house. Those of his children who were married had also houses there. He had two or three houses.

Ques. 27. How many times have you been at the place where Berreyesa house stands upon that rancho since 1846?

Ans. I have been there a great many times. I never counted them.

Ques. 28. Of what materials were the houses constructed which Berreyesa had upon that land in 1846?

Ans. Of wood.

Ques. 29. When was it that these maps that you speak of by which Alviso took more land towards the Aguage were made,

134 before or since the Americans took possession of the country?

Ans. I have never seen the maps. The Berreyesas have told me about them. I don't remember when I saw the maps.

Ques. 30. Did you ever see any of the maps?

Ans. No. I have never seen the maps. I only know this from the Berreyesas.

Ques. 31. Was not the dispute, which you say arose between Alviso and Berreyesa, before the time that Alviso obtained a grant from the government for the rancho of Milpitas?

Ans. After they were in possession this dispute arose.

Ques. 32. I do not ask you anything about any one's possession. State whether this dispute arose before or after the grant was made to Alviso of the rancho Milpitas by the Mexican government in Cala.

135 Ans. It was after. Alviso wanted to take more land than was granted.

Ques. 33. How do you know that it was after the grant was made?

Ans. I knew it from their papers and documents. I was rigidor of the ayuntamiento at that time and gave informes.

Ques. 34. What is the date of the grant of Alviso?

Ans. I don't know. The title shows it.

Ques. 35. Did you ever see and read the grant made to Alviso?

Ans. No, sir. I neither read or saw it.

Ques. 36. You say that the ayuntamiento of San Jose gave Berreyesa the right to occupy the land where he lives on the Milpitas rancho, by what you denominate a title "en calidad de prestamo." Did you ever see and read what was contained in that prestamo title?

136 Ans. I never saw or read it; but I know very well what it was, because the government ordered it to be given by the ayuntamiento.

Ques. 37. Were not these lands known at the time this prestamo title was made as the ejidos of the peublo of San Jose?

Ans. I have never seen the regulation establishing the pueblo; these lands were occupied with the cattle of the community. I mean the cattle of the people that lived on the pueblo.

Ques. 38. What tract of land did the ayuntamiento of San Jose authorize Berreyesa to occupy, what was its extent, and what were the boundaries?

Ans. From the Arroyo Milpitas to the south as far as the Aguage to the sansal on the west, and to the hills on the east. I know this from the Berreyesas themselves.

137 Ques. 39. Which one of the Berreyesas gave you this information?

Ans. Nicholas Berreyesa, the father of the family. I often spoke with him about this affair.

Ques. 40. Have you any other knowledge about this matter of which you have last spoken, except that which you learned from Nicholas Berreyesa?

Ans. I know this from Nicholas Berreyesa as well as from Alviso. Both of them have told me about the limits of Berreyesa.

Ques. 41. What did Alviso tell you about the limits of Berreyesa, and when and where did he tell it to you, and who else was present?

Ans. He told me that his boundaries reach as far as the Arroyo Milpitas. He told me this when he founded the rancho. I was assisting Alviso to found the ranch, and was there at his house

138 on his rancho. He told me this several times.

Ques. 42. Who occupied the place south of the arroyo del Finado Martinez, and lived at the place near the foot of the hills where Berreyesa now lives, before Nicholas Berreyesa went to live there?

Ans. No one lived there before Berreyesa until this time. During the summer season my father sowed, cultivated, and lived there, and after raising the crop left for the pueblo. Some Indians were living with us. We had a shed there for the purpose of taking care of the crop.

Ques. 43. While you were assisting Alviso to found the rancho, did you live upon the ranch, and who else assisted to found it, and where did they live?

Ans. No. I did not live there, he was my friend, and I went to assist him to found it. He took some Indians from the mission of

139 Santa Clara to assist in founding the rancho.

Ques. 44. You say you assisted in founding the rancho. Please tell us all that you did?

Ans. I helped to build a house, a corral, and to sow.

Ques. 45. Were not these things done before 1833?

Ans. Before 1833. The ayuntamiento loaned the lands, by order of the government, to him as well as to others.

Ques. 46. Did Alviso ever tell you since 1833 where his southern boundary line was? If so, when was it, and where were you at the time he told you?

Ans. He has told me so both before and since. I was there at his rancho working with him.

Ques. 47. What work have you ever done for Alviso upon that rancho since 1833?

Ans. Since 1833, I have not done any work for Alviso. I
140 only worked for him at the time I helped to found the rancho.

Ques. 48. At the time you were assisting Alviso to found that rancho, was his family living upon the rancho?

Ans. No, sir, they did not. He was mayor domo of the mission Santa Clara, and had his family there.

Ques. 49. You say that Alviso was envious and wanted to get more land than belonged to him south of the creek near which Berreyesa lived. State how you know that.

Ans. I know it because I saw it. I knew that from the first, that the arroyo was his boundary line, and that he wanted to get more land afterwards.

Cross-examination.—Questions by Mr. Carpentier, on behalf of intervenors.

141 Counsel for claimants objects to the right of Mr. Carpentier to cross-examine the witness, on the ground that he has been representing during this examination the U. S., on whose behalf this witness was produced. The witness having stated during his cross-examination that he was a witness for Mr. Carpentier.

The commissioner states that Mr. Carpentier was not present at any of the direct examination of this witness, and that the questions on said direct examination were put and propounded to the witness on behalf of the U. S., by Jno. B. Williams, appearing for the U. S. dist. att'y.

During the cross-examination of this witness no one has appeared except Messrs. Carpentier and Houghton.

For a further objection to the cross-examination of this witness by the intervenors att'y for claimant states that the notice served upon him for the taking of this deposition of his witness stated
142 that said witness would be produced on behalf of the U. S. and the intervenors.

Mr. Carpentier, att'y for the intervenors, states that this is the first time that he has heard of any notice being given by any one for the taking of this deposition.

Ques. 50. Were you ever mayor domo of the mission Santa Clara?

(Objected to as irrelevant, as calling for new matter about which no much testimony has been given by this witness.)

Ans. I was after Alviso.

Ques. 51. Did not Guillermo Castro, or his father, Carlos Castro, live on the Milpitas before Berreyesa went there?

(Objected to on the same grounds as the preceding question.)

Ans. I don't remember. I believe he once served there after my father. I am not certain about this. I think he never lived
143 there.

Ques. 52. Between the years 1833 and 1846 were you in the habit of visiting either Alviso or Berreyesa at their residence near the Milpitas creek?

(Objected to as leading and not proper cross-examination relative to any matter testified to by this witness.)

Ans. We were in the habit of visiting each other; were friends as well as countrymen.

Ques. 53. Up to what boundary between him and Alviso did Berreyesa occupy.

(Objected to as leading.)

Ans. Berreyesa occupied his land from the Arroyo Milpitas to the south

Ques. 54. Up to what boundary between him and Berreyesa did Alviso occupy?

(Objected to as above.)

Ans. He occupied his land from Milpitas creek north.

144 Ques. 55. Was there, between 1830 and 1840, a little grove near the mouth of the Milpitas creek, or westerly from the mouth?

(Same objection.)

Ans. Yes, near the Irrirrises, below towards the west.

Ques. 56. You have just said, in conversation with Mr. Houghton, that you now remember all about the dispute between Alviso and Berreyesa. Tell all about it.

Ans. Berreyesa once sowed some land on the north of the arroyito, and Alviso told him that his boundary did not extend any further than the arroyito, that that land north of the arroyito belonged to him, and that Berreyesa should confine himself on the other side of the arrayito. I mean the Milpitas arrayito, where Berreyesa lives.

145 Ques. 57th. Has Berreyesa always lived where he now does, near the Milpitas creek, on the south side of it, ever since 1833 or 1834; and if not, where else has he lived and for what period?

(Objected to as leading.)

Ans. Before the year 1833 to the present time he has constantly lived there.

Ques. 58th. How has Berreyesa occupied the land south of the Milpitas creek?

Ans. He occupied it with cattle, horses, houses, corrals, &c., and sowed there.

Ques. 58th. Did Carpentier ever tell you to come here as a witness in this case, or did he ever speak to you of being a witness in this case or in any other one?

Ans. No, sir. These gentlemen have called me. Mr. Carpentier has never spoken to me about this matter. Carlos and Antonio
146 Berreyesa requested me to come as their witness. Both of them are sons of Nicolas Berreyesa.

his
MAXIMO ⋈ MARTINEZ.
mark

Subscribed and sworn to before me this 2d day of October, A. D. 1861.

CUTLER McALLISTER, *U. S. Comm'r.*

Endorsed: Filed October 9th, 1861.

W. H. CHEVERS, *Clerk.*

147 *Deposition of Thos. Campbell.*

United States District Court, northern district of California.

THE UNITED STATES }
vs.
JOSE MARIA ALVISU. }

SAN FRANCISCO, *Nov'r* 6, 1861.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Thomas Campbell, a witness produced on behalf of the United States in case No. 37, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 141 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: Wm. H. Sharp, U. S. attorney, by J. B. Williams, S. O. Houghton for claimant.

Questions by U. S. attorney.

Ques. 1. Your name, age, and place of residence.

Ans. 1. Thomas Campbell; I am nearly 45 years of age; I
148 reside in San Jose; I am an orchadist by profession.

Ques. 2. How long have you lived in California, and how long in San Jose valley?

Ans. 2. I have lived in California since 1846, and in San Jose valley since March, 1847.

Ques. 3. Do you know the Milpitas rancho, claimed in this case by the heirs of Jose Maria Alviso? and if so, when and under what circumstances did you first know it?

Ans. 3. I know the rancho; I first became acquainted with it in the month of July, 1847. I was acting as chain-carrier for the surveyor, Mr. Hutton, who was surveying the pueblo lands, now known as the 500-acre lots, of the pueblo of San Jose. The rancheros owning lands adjoining to those pueblo lands were notified by Burton, the alcalde of San Jose, to show the lines of their ranchos to the

149 surveyor. In running on the west side of the Milpitas or Alviso rancho, Alcalde Burton showed the west line for Alviso, saying that he was authorized by Alviso to show the lines.

(All that part of the above answer in which the witness speaks of the statements made by Burton and other persons objected to as hearsay.)

Ques. 4. Was Nicolas Berreyesa present; and if so, did he also point out his west line?

Ans. 4. He was present, and also pointed out his west line with the assistance of Alcalde Burton.

Ques. 5. Did Nicolas Berreyesa and Burton at that time point out the place on the west line which divided the ranchos of Alviso and Berreyesa?

(Same objection as to the last preceding question.)

Ans. 5. They did.

Ques. 6. Describe by natural objects, if you can, the course
150 of the west line of both ranchos and the place pointed out as dividing one from the other.

Question objected to as calling for statements made by third parties in relation to Alviso's lines in his absence.)

Ans. 6. In starting from the south side of the Berreyesa, on the Aguage creek, we ran in a northwestward direction to a place apparently where the Milpitas creek had overflowed or scattered, forming a gravel bed. On the north side of that bed of gravel the water had apparently concentrated and cut out a channel of considerable depth. At the head or south end of that channel was the corner shown to us by Nicolas Berreyesa and Alcalde Burton as the southwest corner of the Alviso grant and northwest corner of the Nicolas Berreyesa grant. From that point, in running the west line of the Alviso grant, we ran more to the left, in running a northwest course, than we had
151 run in running the west line of the Berreyesa, passing through a willow grove, from the willow grove to the Penitencia creek to a tree with a cross. I can't recollect whether the tree was a live-oak or a sycamore.

(That part of above which states what was done and said by Nicolas Berreyesa on that occasion objected to as hearsay, incompetent and irrelevant.)

Ques. 7. Can the place which you have described as forming the southwest corner of Alviso's ranch and the northwest corner of Berreyesa's ranch, the willow grove, and the marked tree on the Penetencia creek, or either of them, now be identified on the ground?

Ans. 7. The corner dividing the ranchos of Alviso and Berreyesa is easily identified. As for the willow grove and the tree on the Penetencia creek, I am not positive that I could identify them.

152 Ques. 8. Can you state whether those points were shown on the map made by Hutton?

Ans. 8. I don't recollect whether they are or not; nor do I know where the original map is.

Ques. 9. In answer to ques. 3d you have said that Alcalde Burton, at the time the survey was made, stated that he was authorized by

Alviso to show the lines of Alviso's ranch. Did you hear that statement disputed by any person present at the time?

(Question objected to as immaterial and irrelavant.)

Ans. 9. I did not.

Cross-examination.—Ques. for claimant.

Ques. 10. How large was the willow thicket you have spoken of, and where was it located, in what direction from the house in which Henry Robinson now resides?

153 Ans. 10. It was a willow grove of several acres. I can't recollect the particular size. From my recollection at present, it was east or southeast of the house where Robinson now lives.

Deposition closed.

THOMAS CAMPBELL.

Subscribed and sworn to before me this 6th day of November, A. D. 1861.

CUTLER McALLISTER,
U. S. Comm'r.

Endorsed: Filed November 7, 1861.

W. H. CHEVERS, *Clerk.*

154 *Deposition of James T. Stratton.*

In the District Court of the United States for the northern district of California, in land cases.

THE UNITED STATES
v.
JOSE MARIA ALVISO. } Dist. Court No. 37; land com. No. 141.

Be it remembered, that on the 2d day of May, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared James T. Stratton, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the act of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: U. S. att'y and Jno. B. Williams for U. S., and S.
155 O. Houghton for cl'm't.

Questions in behalf of the United States.

Question 1st. State your name, age, residence, and occupation.

Ans. James T. Stratton; age, 31; residence, Alemeda county; occupation, surveyor.

2d. How long have you practiced surveying in California, and in what capacities?

Ans. For the last 12 years in California, during part of which time I have been U. S. deputy surveyor, and have been county surveyor of Alameda co.

3d. Look at the paper now shown you, marked Exhibit Stratton No. 1, and to be annexed to this deposition, and state what it is and who made it.

Ans. It purports to be a topographical map of the Milpitas rancho, confirmed to Jose Maria Alviso in this case, and was made by myself from actual survey.

156 4. Look at the copy in the transcript of the original diseno accompanying the espediente in the case, which copy is marked in pencil "141—1," and state whether you had a copy of said diseno on the ground when you made the survey shown by Exhibit Stratton No. 1.

Ans. I had.

5. Is the stream shown on said diseno as the "Arroyo que se seca ciertas estacimes" shown on Exhibit Stratton No. 1; and if so, how and by what means did you identify it?

Ans. It is shown on said exhibit as the arroyo de las Caches, and I identified it as being the first creek north of Alviso's house, flowing across the plain into the estero in nearly the manner in which it is shown on the diseno.

6. Answer the same question with respect to the arroyo
157 marked on said diseno arroyo de San Jose.

Ans. It is shown on said exhibit as the arroyo de la Penetencia, and was identified as being the first creek running west of and parallel with the mountains.

7. Answer the same question with respect to the stream shown on the right of said diseno as running from the hills and spreading a short distance from the place marked Montecito.

Ans. It is shown on said exhibit as the arroyo las Milpitas, and was identified as being the first large creek south of Alviso's house, which runs nearly across the plain, as shown on the diseno.

8. Answer the same question with respect to the hills marked "Lomas Altas" on said diseno.

Ans. They are represented on Exhibit Stratton No. 1 by
158 the hills marked "Main Ridge," and in which the arroyos los Coches and Milpitas take their rise.

9. Answer the same question with respect to the two houses marked on said diseno.

Ans. Their locality is shown on Exhibit Stratton No. 1, by the place marked "Alviso's house."

10. Did you find on the ground the tree on said diseno marked "Lomites del terreno de la mission de San Jose?"

Ans. There is no tree now standing at the point indicated, nor in that vicinity.

11. Locate on Exhibit Stratton No. 1 the position of that tree as indicated on said diseno.

Ans. On Exhibit Stratton No. 1 I have drawn a dotted line between Alviso's house and the junction of the esteros, to represent the line on the diseno marked "Linea divisoria," and have located the tree as indicated on said diseno.

159 12. State about the area contained between the Milpitas creek extended to the Penetencia, the Penetencia and esteros to their junction, the said dotted line, and the south surveyed line of the Tularcitos rancho to where the dotted line commences, near Alviso's house, and the crest of the range of high hills.

Ans. About 5,680 acres, or about 1,200 acres more than a square league.

13. How much between the dotted line and the line of the Tularcitos and the esteros?

Ans. About 480 acres.

Cross-examination waived for the present, with the privilege of recalling the witness within the time for closing proofs, if

160 claimant's att'y to cross-examine on the matters brought out in direct examination.

Exam. closed.

JAS. T. STRATTON.

Subscribed and sworn to before me this 2d day of May, A. D. 1862.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed May 2d, 1862.

W. H. CHEVERS, *Clerk.*

[Here follows map, page 160.]

161 *Archive Exhibit No.* 1.

U. S. Dist. Court.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } No. 37.

It is hereby stipulated and agreed that the annexed map be filed without further proof as Archive Exhibit No. 1, in behalf of Carpentier *et al.*

San Francisco.

JNO. B. WILLIAMS,
Att'y in aid of U. S. Att'y.
W. H. CARPENTIER,
For Self and Others.

[Here follows map, page 161.]

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, J. W. Mandeville, surveyor general of the United States for the
tate of California, and as such having in my office and in my charge
nd custody a portion of the archives of the former Spanish and Mexi-
an territory or department of Upper California, as also the papers
of the late board of commissioners to ascertain and settle the
62 private land claims in California, by virtue of the power vested
in me by law, do hereby certify that the preceding and here-
into annexed page of tracing paper numbered one, inclusive, exhibits
true, full, and correct copy of the original diseno attached to and
orming part of the original espediente now on file among the archives
foresaid in my custody, entitled "Espediente promovido por el y
yuntamiento de San Jose en pretencion del senolamiento de termino
ara el fundo legal de dicha poblacion, 1837, No. 339, Z."

In testimony whereof, I have hereunto signed my name, official,
nd caused my seal of office to be affixed at the city of San Fran
isco, this fourteenth day of November, 1860.

[SEAL.] J. W. MANDEVILLE,
U. S. Surveyor General for California.

Endorsed: Filed June 2d, 1862.

W. H. CHEVERS, *Clerk.*

163 *Deposition of Tito Livio de la Rosa.*

In the District Court of the United States for the northern district of California.

THE UNITED STATES
v.
JOSE MARIA ALVISO. } In land cases.—Dist. Court No. 37; land com. No. 141.

Be it remembered, that on this 16th day of July, A. D. 1862, at the city of San Francisco, in the district aforsaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States pursuant to the acts of Congress in that behalf, personally appeared Tito Livio de la Rosa, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by A. D. Splivalo, a sworn interpreter.

164 Present: S. O. Houghton, esq., for claimant; W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the claimant.

Question 1. What is your name, age, and place of residence?

Ans. My name is Tito Livio de la Rosa; my age is 38 years; I reside in Santa Clara county.

2. Are you acquainted with the Rancho Milpitas, in Santa Clar county? If so, how long have you known it?

Ans. I do. I have known it since 1849.

3. Do you know the location of the arroyo marked upon the disen and designated by the name of the "Arroyo del Finado Martinez," and which is designated on the map now shown you by the name o "Arroyo las Milpitas."

(The witness is here shown Exhibit Stratton No. 1.)

165 Ans. I do.

4. Are they the same or different streams?

Ans. They are the same streams.

5. State, if you know, who occupied the land lying south of the Arroyo Milpitas when you first knew that rancho. If you know who occupied it at that time, state in what manner it was occupied, and how long that occupation continued.

Ans. It was occupied when I first knew the ranch by the late Jose Maria Alviso; he occupied it with cattle up to the time of his death in 1853.

6. What acts of possession and control, if any, were exercised by Alviso over the land lying south of the Arroyo las Milpitas during the period you have mentioned?

166 Ans. He occupied it with his cattle and vaqueros, who looked after his cattle there, and exercised the possession and control of a man who kept the ranch on the premises.

7. Do you know of any rodeos having been given by any one south of the Arroyo Milpitas? If so, state by whom those rodeos were given and who cattle were gathered in such rodeos.

Ans. As administrador of the ranch of Jose Maria Alviso I myself have given rodeos at said place. The cattle gathered were those of Jose Maria Alviso.

8. Please point out on that map, Exhibit Stratton No. 1, as near as you can the place where those rodeos were had.

Ans. The witness points out a place on the map between the house of Berreyesa and the southern boundary of the ranch, as laid down upon the map, and marks said place with a circle, in red

167 writing, thereon, "rodeo," and says "that is the place where the rodeos were held."

9. You say that you made those rodeos as administrador of the cattle of Alviso. State whether you were acting for yourself, or were you employed for Alviso.

Ans. I was employed by Alviso to give those rodeos.

10. State about how many times rodeos were made at the place indicated by you during the period you have mentioned, either by yourself or by any other persons in the employment of Alviso and under his direction.

Ans. I cannot say precisely how many, but they were numerous.

11. Did you ever know of any rodeos being held by Alviso or by any other person under his direction, at any place south of the Arroyo Milpitas, other than the place you have marked as the

168 rodeos ground for the purpose of gathering the cattle of Alviso, which ranged to the south of that arroyo?

Ans. I do not know of any rodeos having been given in any other place than the one I have marked.

12. Did you ever know of any rodeos being given by Nicolas Berreyesa, on the plain south of the Arroyo los Milpitas, and between that arroyo and the south boundary of the rancho as shown upon the map?

Ans. I did not.

13. State, if you know, where Nicholas Berreyesa kept his cattle during the period you have mentioned.

Ans. He kept his cattle about five miles distant from his house on the hills.

(Here the witness points to the hills on the map, Exhibit
169 Stratton No. 1, east of the house of Berreyesa, as the place where Berreyesa's cattle were kept.)

14. State where you resided from 1849 up to the time of Alviso's death, in 1853.

Ans. In the house of Alviso, on the Milpitas ranch.

15. State, if you know, the place where the house of Nicolas Berreyesa stood, and if you know how he was occupying that place. If you do know, state how you acquired that knowledge.

Ans. Berreyesa's house stood here. (Witness points to the place on Exhibit Stratton No. 1, marked "old adobe house of Berreyesa.") He occupied said place through the kindness of Jose Maria Alviso, who was his friend, and therefore allowed him to put his house there, because he had no other place where to put his family. He also allowed him to keep some cattle, with a condition, however,
170 that his cattle should never come into the plain, but that it should always be kept in the hills. I knew all this through Jose Maria Alviso, who told me so.

16. At the time this statement was made to you was Nicholas Berreyesa present, or was there any one present besides yourself and Alviso? If there were others present, name them.

Ans. Berreyesa was not present; the family of Alviso were. Alviso made the above statement to me very often.

17. State if you were ever present at any conversation between Berreyesa and Alviso, when anything was said by either Alviso or Berreyesa relative to the manner in which Berreyesa held the place where his house stood, and how he came there.

Ans. No; I have never been with Berreyesa and Alviso together.

171 18. Did you ever hear Nicolas Berreyesa at any time say how he first came to occupy the place where his house stood?

Ans. I never did.

19. During the time that you had charge of Alviso's cattle did any one ever dispute the right of Alviso to make rodeos at the place marked by you on the map?

Ans. Upon one occasion, when giving a rodeo, Alviso being present, the old man Berreyesa sent one of his sons to ask him why he held his rodeo there; Alviso answered because that was his land. This was all that ever happened.

20. During the time that you lived upon that rancho and made rodeos at the place pointed out by you, did either Alviso or yourself ever ask permission of any person to make rodeos at that place, or did you make rodeos without asking permission of any one?

172 Ans. He always gave rodeos in that place without asking any one's permission.

21. What was the custom among the rancheros in that vicinity relative to making rodeos? Would the owner of one rancho under any circumstances enter upon the lands occupied by any of his neighbors, even for the purpose of gathering his own cattle, without first asking permission of a person upon whose lands he went for that purpose? State what custom did prevail in that vicinity relative to making rodeos upon neighboring ranchos.

Ans. No; whenever any one had to gather cattle in another's ranch, he always had to ask permission of the owner of the land; but the way of giving rodeos was this: if one ranchero wished to gather his cattle which were upon another's ranch, he would ask the

173 owner of the ranch where his said cattle were to give him a rodeo, which rodeo would be given by the owner of the ranch upon which the rodeo was held; and in case the said owner of the ranch had not sufficient people to give the rodeo, the ranchero soliciting the rodeo would lend his people to the owner of the ranch to give the rodeo.

The foregoing testimony is objected to by the U. S. att'y as irrelevant, hearsay, and incompetent; irrelevant, because the knowledge of the witness is limited to the year 1849 and subsequently; hearsay, because the witness derived his knowledge from the late Jose Maria Alviso; and incompetent, because the land granted must be determined by the documentary proof, and not by proof of rodeo boundaries.)

Cross-examination.

Questions by U. S. att'y:

174 Ques. 22. Had you any knowledge of the Milpitas rancho prior to the year 1849?

Ans. I had not.

Deposition closed.

TITO L. DE LA ROZA.

Subscribed and sworn to this 16th day of July, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed July 23d, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of Pedro Mesa.

175 In the District Court of the United States for the northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } In land cases.—Dist. Court No. 37; land com. No. 140.

Be it remembered, that on this 16th day of July, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Pedro Mesa, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by A. D. Splivalo, a sworn interpreter:

Present: S. O. Houghton, esq., for claimant; W. H. Sharp,
176 U. S. att'y, for the U. S.

Questions in behalf of the claimant:

Question 1st. What is your name, age, and place of residence?

Ans. My name is Pedro Mesa; my age is 51 years; I reside in Santa Clara county.

2. Do you know the Rancho Milpitas, in Santa Clara county? If so, state how long you have known it.

Ans. I do; I have known that land ever since I can remember.

3. Do you know the place upon that rancho upon which the house stood in which Nicholas Berreyesa resided for several years?

Ans. I do.

4. State, if you know, how Berreyesa first went to live there; if you do know, state how you acquired your knowledge.

177 Ans. On one occasion, when present with Nicolas Berryesa, Jose Maria Alviso, and Joaquin Higuera, when possession of Joaquin Higuera's ranch was given, I heard Berreyesa say to Alviso, Why do you drive me altogether into the hills? Alviso answered, You may have your house in the plain; but as to your cattle, you must always keep it in the hills. It was in this manner that I first knew that Berreyesa was living there through the permission of Alviso.

5. Did Berreyesa at that time question Alviso's right to impose these terms upon him, and compel him to conform to them?

Ans. He did not; he conformed to what Alviso said to him, and never said anything afterwards. When the conversation above stated occurred Alviso also stated to him: While I live you can sow on the plain around your house and I will not prejudice you, but
178 you must keep your cattle in the hills.

6. During the time that Berreyesa had his house at that place how far was it from the rancho Milpitas to the place where you resided?

Ans. I think about five or six miles.

7. Do you know where rodeos were given by Alviso upon that part of his rancho lying south of the arroyo las Milpitas on the side towards the rancho of Pala? If so, state where.

Ans. I do. There is an arroyito coming down from the hills, which after a little distance spreads out, (here witness draws a blue line on Exhibit Stratton No. 1, marked "Arroyito,") and near by, about the circle, marked "Rodeo," was the place where Alviso used to give his rodeos.

8. By whose cattle were the lands between the Arroyo Mil-
179 pitas and the Arroyo Aguage occupied from the time that Berreyesa first went to live at the place you have named down to the time of Alviso's death?

Ans. It was occupied only by the cattle of Alviso and some of the cattle of the pueblo.

9. During the same period where did Nicolas Berreyesa keep his cattle?

Ans. Some few cattle, which he had brought from San Jose, he always kept in the hills east of his house.

10. When Alviso made rodeos at the place you have named did he make them without the permission of Berreyesa, or did he first have to obtain permission from him? State whether you occupied any official position of such a nature as enabled you to possess a peculiar knowledge in relation to that matter.

Ans. Alviso always gave his rodeos at that place without
180 asking any one's permission; the position I occupied at that was juez de campo, (judge of the plains,) and when rodeos were given on Mondays, either to the north or south of the pueblo, I always notified the neighboring rancheros, among them Alviso, but not Berreyesa.

The foregoing testimony so far as proof of rodeo boundaries is concerned is objected to by the U. S. att'y, as incompetent.

Cross-examination.—Questions by U. S. att'y.

Ques. 11. In answer to ques. 4, you state a conversation between Alviso and Berreyesa at the time possession was given to Joaquin Higuera. In what year was that?

Ans. I do not recollect about the time, but it was when Pico was alcalde, perhaps about the year 1841 or 1842.

181 12. Who was alcalde before Pico?

Ans. I do not remember.

13. Do you recollect when Pedro Chaboya was alcalde?

Ans. I do. I cannot recollect exactly the time.

14. How far from the Milpitas rancho did you live at the time Pedro Chaboya was alcalde?

Ans. I lived in the pueblo of San Jose, about four or five miles distant.

15. Do you not know that while Pedro Chaboya was alcalde he gave Nicolas Berreyesa permission to occupy land between the Pala rancho and the land occupied by Alviso?

16. Did you never hear of any such permission having been granted while you lived at the pueblo?

182 Ans. I never did.

17. Do you not know that Juan Alvirez, who was alcalde before Pedro Chaboya, gave permission to Jose Maria Alviso to occupy his land?

Ans. I remember that he was alcalde, but I do not know of his giving permission to Alviso.

18. At the time possession was given to Joaquin Higuera, which was of the Pala ranch some distance to the south of the Milpitas, what gave rise to the conversation between Nicolas Berreyesa and Alviso, which you have stated in your answer to ques 4, and what had the giving of the possession of the Pala ranch to do with the dispute between Berreyesa and Alviso?

Ans. It happened in this way, Alviso being colindante of the rancho of Pala showed his papers to those who were giving possession
183 of the ranch to Higuera, and on Berreyesa's seeing those papers he spoke to Alviso as I have stated.

19. Then Alviso at that time claimed that his southern boundary was the northern boundary of the Pala ranch?

Ans. He did.

20. In what year were you "judge of the plains," as stated by you in answer to ques. 10?

Ans. I don't remember in what year, but I remember that Dolores Pacheco was alcalde.

21. Did Nicolas Berreyesa ever hold any rodeos?

Ans. I never knew of his giving a rodeo, or where he gave it.

22. If Berreyesa had cattle in the hills, as you have stated in answer to ques. 4, why was he not summoned when Alviso gave his rodeos?

Ans. Because he was not a colindante of the pueblo; be-
184 sides, the ground he occupied was not recognized as his own, but as Alviso's, who had 3,000 head of cattle on the land. When I speak of the lands not recognized as belonging to Berreyesa, I mean to say that they were not recognized as the lands of Berreyesa by the authorities of the pueblo.

Deposition closed.

PEDRO MESA.

Sworn to and subscribed July 16, 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed July 23d, 1862.

W. H. CHEVERS, *Clerk.*

185 *Deposition of Juan Bernal.*

In the District Court of the United States for the northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } In land cases.—Dist. Court No. 37; land com. No. 141.

Be it remembered, that on this 16th day of July, A. D. 1862. at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Juan Bernal, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by A. D. Splivalo, a sworn interpreter.

186 Present: S. O. Houghton, esq., for claimant, and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Juan Bernal; I am about 45 years of age; I reside in Santa Clara county.

2. Do you know the Rancho Milpitas, in Santa Clara county? If so, how long have you known it?

Ans. I do; I have known it for twenty years.

3. Do you know the place where Nicolas Berreyesa had his house on that rancho?

Ans. I do.

4. During the time that Nicolas Berreyesa has lived there where has he kept his cattle, in the plain or on the hills?

Ans. On the hills.

187 5. Whose cattle occupied the plain between the Arroyo Aguage and the Arroyo Milpitas?

Ans. Jose Maria Alviso's.

6. Who made rodeos of cattle between those two arroyos on the plain?

Ans. Jose Maria Alviso.

7. Did you ever know of any rodeos being made by Nicolas Berreyesa on the plain between those two arroyos?

Ans. I never did.

8. Did you ever know of any one other than Alviso holding rodeos there?

Ans. I did.

(The foregoing testimony is objected to as incompetent and irrelevant.)

Cross-examination waived. Deposition closed.

his
JUAN × BERNAL.
mark.

Subscribed and sworn to this 16th day of July, A. D. 1862, before me.

W. H. CHEVERS,
U. S. Com.

188 Endorsed: July 23d, 1862.

W. H. CHEVERS, *Clerk.*

Deposition of Fr'co Bernal.

In the District Court of the United States for the northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } In land cases.—Dist. Court No. 37; land com. No. 141.

Be it remembered, that on the 16th day of July, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the district of California to take the acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Francisco Bernal, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said
189 court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being interpreted by A. D. Splivalo, a sworn interpreter.

Present: S. O. Houghton, esq., for claimant; W. H. Sharp, U. S. att'y for the U. S.

Questions in behalf of the claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Francisco Bernal; I am about 38 years of age; I reside in Santa Clara county.

2. Do you know the Rancho Milpitas, in Santa Clara county? If so, how long have you known it?

Ans. I do. I have known it ever since I can remember.

3. State, if you know, when Nicolas Berreyesa first went to live on the Rancho Milpitas?

190 Ans. I do.

4. State where Nicolas Berreyesa has kept his cattle during the time he has had his house on that ranch.

Ans. Up in the hills to the east of the house, about five miles distant, where he also had his corrals and a little house. He also gave his rodeos and branded his cattle there.

5. Whose cattle occupied the plain to the south of the arroyo de las Milpitas, and between that arroyo and the Arroyo Aguage?

Ans. Alviso's.

6. Point out on the map, Exhibit Stratton No. 1, the place where Alviso made rodeos of his cattle to the Arroyo Milpitas.

Ans. At the end of the arroyito, as marked by Pedro Meesa, and about the red circle marked by De la Roza, there is a little
191 rising ground, where Alviso gave his rodeos. Many used to go to that place, even the Berreyesas, for amusement, to lasso and brand cattle, for Alvariso had about 3,000 head.

7. How far did you live from that place where the rodeos were held, and were you often present at those rodeos?

Ans. I lived in the pueblo of San Jose. I went there nearly always when rodeos were given. Many others also went, for Alviso had many cattle and employed many men.

8. When you went there did you go to work for Alviso, and assist him in branding his cattle, and did the other persons whom you say went there go for the same purpose?

Ans. I was paid by Alviso for gathering and branding his cattle. Of the others who went, some were paid and others were not; the most of them were employed by Alviso, and paid before he needed many.

192 9. Did you ever know of any rodeos being made by Nicolas Berreyesa anywhere about there on the plain?

Ans. The Berreyesas never had any cattle on the plain, and never held any rodeos about there.

(The foregoing testimony is objected to as irrelevant and incompetent.)

Cross-examinnation.

Questions by U. S. att'y:

Ques. 10. In answer to ques. 3, you state that you know when Nicolas Berreyesa first went to live on the rancho of Milpitas, but you do not state at what time. In what year did he first go there?

Ans. I do not remember.

11. How many years ago about was it?

Ans. I don't remember. It was many years ago.

193 12. Can you not state somewhere near when it was, who was alcalde, or fix some circumstance?

Ans. I do not remember; I never take notice. I remember the old man Berreyesa living there, but I do not know why he lived there.

13. Have not Berreyesa and his family lived on the place called Milpitas as long as you can recollect?

Ans. I first saw him living in the mission of San Jose, and afterwards I saw him on the Milpitas ranch.

Deposition closed.

his
FRANCISCO × BERNAL.
mark.

Subscribed and sworn to this 16th day of July, A. D. 1862, before me.

W. H. CHEVERS,
U. S. Com.

Endorsed: Filed July 23, 1862.

W. H. CHEVERS, *Clerk.*

194 *Deposition of J. W. Weekes.*

District Court of the United States, northern district of California.

UNITED STATES
vs.
JOSE MARIA ALVISO.

SAN FRANCISCO, *November 9th*, 1860.

On this day before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came James W. Weekes, a witness produced on behalf of Nicolas Berreyesa *et als.*, intervenor in case No. 37, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 141, on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present: H. W. Carpenter, esq., of counsel for intervenors, and Calhoun Benham, esq., dist. att'y, for the U. S.

Question 1st, by counsel for the intervenors. What is your name, age, and place of residence?

195 Ans. My name is James W. Weekes; my age is 48 years, and my residence is in the county of Santa Clara.

2. How long have you resided in Santa Clara county?

Ans. Ever since it has been a county, and many years before. I went there in the year 1832, and have resided most of the time in what is now Santa Clara county ever since.

3. Are you acquainted with the ranchos of Jose Maria Alviso and Nicolas Berreyesa?

Ans. I am.

4th. How long have you known the rancho of Nicolas Berreyesa?

Ans. Since it was first settled by the Berreyesas, I think in 1834.

5th. How long have you known the rancho of Jose Maria Alviso?

Ans. Ever since I went there to settle. I knew both Alviso and Berreyesa in Santa Clara before they went on their ranchos.

196 Each of them were mayor domos; one in Santa Clara, and the other in the mission of San Jose.

6. Which ranch was first settled?

Ans. That of Nicolas Berreyesa.

7. Have you ever lived on either of said ranchos?

Ans. I have on both of them. I have lived a few days at a time with Gulnac, on Berreyesa's ranch, and I have worked on Alviso's, farming and at carpenter work.

8. About how long ago?

Ans. I lived on the Alviso rancho about 1835, when Mr. Forbes was farming there, and on the Berreyesa ranch about 1836 or 1837, when Mr. Gulnac was carrying on the distilling business there. I have been often to both of those places before and since, and I have always been acquainted with the ranchos and their occupants.

197 9. Were these ranchos adjoining each other?

Ans. Yes, sir.

10. Do you know what was the boundrary between them?

Ans. I have always learned that the creek of Milipitas was the boundary between them. Alviso claimed south to the Milpitas creek, and Berreyesa claimed from the Milpitas creek to the Aguga creek.

11. How have you learned that this was the boundary?

Ans. Mr. Berreyesa's informing me so himself many years back, and I believe Mr. Alviso informed me so himself, and by each party occupying the land adjacent to the creek for agricultural purposes, and building houses, and by each party having peaceable possession, and I never heard of any dispute about it whilst Alviso lived.

198 12. Where did Mr. Gulnac live?

Ans. Mr. Gulnac lived near the Milpitas creek, near where Mr. Berreyesa's first residence was. Mr. Gulnac had sowing fields on the banks of the creek. He had his distillery some two or three hundred yards from the banks of the creek up near the foot of the hill.

12. By whose permission did Mr. Gulnic occupy that place?

Ans. Mr. Gulnic occupied that place by permission of Mr. Berreyesa, as his tenant.

14. Who had the possession and was recognized as the owner of the land on the south side of the Milpitas creek?

Ans. Nicolas Berreyesa and family.

15. Was his possession, so long as you have known the place, actual and exclusive as against Alviso, and those holding under

199 him on the south side of said creek?

Ans. I always understood the south side of the creek to be in the possession of the Berreyesas, where their residences and improvements have been, and I never knew of any interference with their possession until a few days back.

16. State whether Nicolas Berreyesa has lived upon his said rancho continuously from the time when he first took possession of it up to the occupation of this country by the Americans.

Ans. He has continuously up to the present time.

17. Has he a family?

Ans. Yes, sir. A large one; I think there must be some ten or twelve children.

18. Where were they born and brought up?

Ans. Some of them were born on the rancho, and they have
200 all been brought up there.

19. Did Berreyesa have considerable fields on the rancho?

Ans. As much so as any other ranchero; enough for his own use, and some to spare.

20. On what part of the rancho were these sowing fields?

Ans. They were bordering on the creek at different places from the foot hills to where the creek spreads out.

21. Did Berreyesa have cattle and horses? If so, where did he pasture them?

Ans. He had, and he pastured them on the ranch. The corral was close by his houses. He had pretty large herds of cattle and horses, but I don't know how many.

22. How did Alviso occupy his rancho?

Ans. In the same manner as Berreyesa.

201 25. Where were his sowing fields?

Ans. Bordering on the San Miguel creek, close to his houses.

24. Where did he pasture his cattle?

Ans. Between the creeks. He had the corral close to his house. His cattle ranged to the top of the hills.

25. How far south did the exclusive possession of Berreyesa extend?

Ans. No farther than the Aguaja creek—up to the Aguaja creek.

26. Look at the plat of the survey of the rancho confirmed to Jose Maria Alviso, returned to this court by J. W. Mandeville, U. S. surveyor general for California, and state whether you recognize the position of Berreyesa's house, and of the Milpitas creek, as shown on said plat.

Ans. I do. I recognize the location of Berreyesa's house, and I think the creek on the map to the north of the house is in-
202 tended for the Milpitas creek.

27. Please to describe, as well as you can, the Milpitas creek.

Ans. It is a creek that has its source from the hills, of considerable size. It runs down into the plain in a serpentine course, in a westerly direction. It spreads and sinks in the plain before it reaches the Penetencia creek. The larger portion of its course is a deep creek, with well-defined banks, and is a well-defined landmark.

28. Is any of the land included in said survey, as shown by said plat of survey on the south side of the Milpitas creek?

Ans. There is a large tract of it, as shown by the location of Berreyesa's house and the creek, which I understand to be intended for the Milpitas.

29. Does it include the place where Berreyesa has resided ever since he went upon the ranch?

196 Each of them were mayor domos; one in Santa Clara, and the other in the mission of San Jose.

6. Which ranch was first settled?

Ans. That of Nicolas Berreyesa.

7. Have you ever lived on either of said ranchos?

Ans. I have on both of them. I have lived a few days at a time with Gulnac, on Berreyesa's ranch, and I have worked on Alviso's, farming and at carpenter work.

8. About how long ago?

Ans. I lived on the Alviso rancho about 1835, when Mr. Forbes was farming there, and on the Berreyesa ranch about 1836 or 1837, when Mr. Gulnac was carrying on the distilling business there. I have been often to both of those places before and since, and I have always been acquainted with the ranchos and their occupants.

197 9. Were these ranchos adjoining each other?

Ans. Yes, sir.

10. Do you know what was the boundrary between them?

Ans. I have always learned that the creek of Milipitas was the boundary between them. Alviso claimed south to the Milpitas creek, and Berreyesa claimed from the Milpitas creek to the Aguga creek.

11. How have you learned that this was the boundary?

Ans. Mr. Berreyesa's informing me so himself many years back, and I believe Mr. Alviso informed me so himself, and by each party occupying the land adjacent to the creek for agricultural purposes, and building houses, and by each party having peaceable possession, and I never heard of any dispute about it whilst Alviso lived.

198 12. Where did Mr. Gulnac live?

Ans. Mr. Gulnac lived near the Milpitas creek, near where Mr. Berreyesa's first residence was. Mr. Gulnac had sowing fields on the banks of the creek. He had his distillery some two or three hundred yards from the banks of the creek up near the foot of the hill.

12. By whose permission did Mr. Gulnic occupy that place?

Ans. Mr. Gulnic occupied that place by permission of Mr. Berreyesa, as his tenant.

14. Who had the possession and was recognized as the owner of the land on the south side of the Milpitas creek?

Ans. Nicolas Berreyesa and family.

15. Was his possession, so long as you have known the place, actual and exclusive as against Alviso, and those holding under

199 him on the south side of said creek?

Ans. I always understood the south side of the creek to be in the possession of the Berreyesas, where their residences and improvements have been, and I never knew of any interference with their possession until a few days back.

16. State whether Nicolas Berreyesa has lived upon his said rancho continuously from the time when he first took possession of it up to the occupation of this country by the Americans.

Ans. He has continuously up to the present time.

17. Has he a family?

Ans. Yes, sir. A large one; I think there must be some ten or twelve children.

18. Where were they born and brought up?

Ans. Some of them were born on the rancho, and they have
200 all been brought up there.

19. Did Berreyesa have considerable fields on the rancho?

Ans. As much so as any other ranchero; enough for his own use, and some to spare.

20. On what part of the rancho were these sowing fields?

Ans. They were bordering on the creek at different places from the foot hills to where the creek spreads out.

21. Did Berreyesa have cattle and horses? If so, where did he pasture them?

Ans. He had, and he pastured them on the ranch. The corral was close by his houses. He had pretty large herds of cattle and horses, but I don't know how many.

22. How did Alviso occupy his rancho?

Ans. In the same manner as Berreyesa.

201 25. Where were his sowing fields?

Ans. Bordering on the San Miguel creek, close to his houses.

24. Where did he pasture his cattle?

Ans. Between the creeks. He had the corral close to his house. His cattle ranged to the top of the hills.

25. How far south did the exclusive possession of Berreyesa extend?

Ans. No farther than the Aguaja creek—up to the Aguaja creek.

26. Look at the plat of the survey of the rancho confirmed to Jose Maria Alviso, returned to this court by J. W. Mandeville, U. S. surveyor general for California, and state whether you recognize the position of Berreyesa's house, and of the Milpitas creek, as shown on said plat.

Ans. I do. I recognize the location of Berreyesa's house, and I think the creek on the map to the north of the house is in-
202 tended for the Milpitas creek.

27. Please to describe, as well as you can, the Milpitas creek.

Ans. It is a creek that has its source from the hills, of considerable size. It runs down into the plain in a serpentine course, in a westerly direction. It spreads and sinks in the plain before it reaches the Penetencia creek. The larger portion of its course is a deep creek, with well-defined banks, and is a well-defined landmark.

28. Is any of the land included in said survey, as shown by said plat of survey on the south side of the Milpitas creek?

Ans. There is a large tract of it, as shown by the location of Berreyesa's house and the creek, which I understand to be intended for the Milpitas.

29. Does it include the place where Berreyesa has resided ever since he went upon the ranch?

203 Ans. It does. It includes his house, corral, and his sowing fields, and a large tract of Berreyesa's land.

30. Have you ever held any office or position in the pueblo of San Jose?

Ans. I have; several. I was clerk under Stakes at the time when he received the archives of the pueblo of San Jose under the American government, immediately after the American occupation. I myself had charge of the archives and papers of the pueblo.

31. Do you recollect at that time to have seen among said archives any official documents concerning the rancho of Nicolas Berreyesa?

Ans. I recollect of having seen a document on stamped paper, (similar to those papers on which petitions and other papers are written,) which purported to be a petition asking for the rancho
204 Berreyesa. There may have been decrees upon it, but I do not recollect of any. I was afterwards alcalde of said pueblo. The document to which I refer was not at that time in the archives. I served previously as clerk to Capt. Burton when he was alcalde, and it was not there then. I searched for it and I could not find it.

32. Do you understand the Spanish language?

Ans. I do.

Cross-examination.—Questions by counsel for the U. S.

Ques. 33. Do you recollect a map made somewhere about 1836 or 1837, showing the land claimed by the pueblo of San Jose? And if so, state fully what you know about it.

Ans. I recollect a map being drawn up about that time by Mr.
205 Gulnac, showing the boundaries of the pueblo lands, by order of the government, surveyed by a commission. I think it was later than 1836 or 1837. I was Mr. Gulnac's companion at the time the survey was made. I believe the original map is now in the U. S. surveyor general's office for California. I was present and saw the map made.

34. A copy of that map, certified to by the U. S. surveyor general, is now on file in this court in the case of The United States *vs.* Jose Higuera, No. 228. Examine this copy now shown you, and state whether you recognise it as a copy of the original to which you have referred.

Ans. I recognise this as a copy of the original to which I refer, with the exception of the blue shading, and the red lines showing the Higuera ranch.

35. Examine that portion of said map which shows the
206 houses of Jose Higuera, Jose Maria Alviso, and Nicolas Berreyesa, and state whether the position of those ranchos to each other is correctly laid down on it, as the possession and occupation of them were understood to be at the time this map was made by yourself and the residents of that part of the country generally.

Ans. It is. The arroyo Pentencia was always considered the western boundary of all three ranchos, so far as I am aware. The arroyo between Berreyesa and Alviso I have always known as Milpitas.

That between Alviso and Higuera was always called San Miguel; higher up in the mountains it is called Las Coches. The place called Tularcitos on this map is a mile, more or less, northeast of Alviso's house.

JAMES W. WEEKES.

Sworn to and subscribed this 9th day of November, A. D. 1860.
W. H. CHEVERS, *U.S. Commissioner.*

207 Endorsed: Filed October 15th, 1862.
W. H. CHEVERS, *Clerk.*

Deposition of F. C. Berreyesa.

District Court of the United States, northern district of California.

THE UNITED STATES
vs.
JOSE MA. ALVISO.

SAN FRANCISCO, *November 9th*, 1860.

On this day, before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Francisco C. Berreyesa, a witness produced on behalf of Nicolas Berreyesa *et als.*, intervenors in case No. 37, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 141 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being
208 interpreted by a sworn interpreter, to wit: by James W. Weekes.

Present: H. W. Carpentier, esq., counsel for intervenor, and Calhoun Benham, esq., U. S. att'y for the U. S.

Question 1st, by counsel for the intervenor. What is your name, age, and place of residence?

Ans. My name is Francisco C. Berreyesa; my age is 35 years; and I reside on my father's ranch in Santa Clara county, the Rancho Milpitas.

2d. How long have you lived there?

Ans. About twenty-six years.

3d. Do you know what is the boundary between the said rancho and the rancho of Jose Maria Alviso? If so, state it.

Ans. I do. The boundary is the arroyo de las Milpitas.

4th. Who has been in possession of the land on the south side of said arroyo, and between it and the Aguaja creek, during
209 the last twenty-six years?

Ans. Don Nicolas Berreyesa.

5th. How has he been in possession?

Ans. By occupying the same with his animals, stock-houses, and sowing.

6th. Has any one else besides Berreyesa and those holding under

him occupied any of the lands south of the Milpitas creek during said period prior to the Americans squatting on it?

Ans. No one unless by the permission of my father, Nicholas Berreyesa.

7th. Did you ever have any conversation with Jose Maria Alviso, in his lifetime, concerning the boundary between said ranchos?

Ans. I have.

8th. State it,

Ans. I, with my brother, had lassoed a calf on the north
210 side of Milpitas creek, where Chrysostom Galindo had some sowing. Alviso came up and scolded with us for lassoing the calf, and said on the other side of the creek we might do as we pleased, but it was not right for us to harrass the cattle on that side of the creek, on his land. He complained of cattle being molested on his land, but said on the other side of the creek we could do as we pleased.

9th. Is Nicolas Berreyesa sane in mind?

Ans. He is not. He is demented. It is about four or five years since he has been completely demented, and he had been for two or three years before that partially insane.

10th. Have you any interest in the rancho of Nicolas Berreyesa?

Ans. I have none, by my father has.

211 Cross-examination waived.

FRANCISCO C. BERREYESA.

Sworn to and subscribed before me this 9th November, A. D., 1860.

W. H. CHEVERS, *U. S. Commissioner.*

Endorsed: Filed October 15th, 1862.

W. H. CHEVERS, *Clerk.*

212 *Opinion rejecting survey.*

U. S. Dist. Court, nor. dist. of Califonia.

UNITED STATES *vs.* JOSE MARIA ALVISO. } No. 37.

Objections to survey.

OCTOBER, 27, 1862.

On the 28th of September Jose Ma. Alviso obtained from the governor a grant of a tract of land called "Milpitas," described in the first part of his title papers as of the extent of one league from north to south and one half a league from east to west, and in the 4th condition as one league in latitude and one-half a league in longitude, as shown by the map, &c.

On the 2d October, 1835, another title paper was issued to him, by which there was granted an additional half league in width by a

league in length, lying on the west of the one-half league first granted, making in all one square league of land.

213 No boundaries whatever were mentioned in the title papers. We are therefore necessarily referred to the diseno to ascertain the location of the land.

The diseno shows a tract of land bounded on the east by range of hills, near the base of which, towards the north, is the house of Higuera, and towards the south the houses of Alviso, who had, at the time he applied for a grant, been residing on the land for a considerable period, by permission of the authorities of the pueblo.

The western boundary is an estero and brook not named on the diseno, but ascertained and admitted to be the arroyo de la Penetencia.

On the north the tract is bounded by a line drawn near a large tree, at which, on the first diseno presented, it stopped, but on the second, made after the augmentation was obtained, it is produced to the west across the Penitencia so as to include the additional one-half league granted.

214 On the south a similar line is drawn, marked "Lindero al sur," or southern boundary. It commences at a grove marked "Montecito," and is drawn at right angles to the course of the hills, striking the latter a short distance to the south of the point where an arroyo issues from them. This arroyo, though named on the map the "arroyo del Finado Martinez," is identified with the Milpitas creek. The distance between these lines, as shown by the scale, is 5,000 varas or one league, and it is evident, from the terms of the grant, that they were intended to be drawn so as to give to the tract that length.

The distance from the hills to the Penetencia is only about 3,000 varas, but as an additional one-half league was granted and the northern boundary produced across or to the west of that creek, there seems to be no reason why it may not be crossed to obtain the requisite quantity.

215 Shortly after this grant was issued complaint was made by Higuera, Alviso's neighbor on the north, that a portion of his land was included in the diseno of the latter.

The dispute was finally settled by the adoption of an agreed line drawn considerably to the south of the line delineated on the diseno. This boundary is not now in controversy. The only dispute relates to the southern boundary.

In the official survey this line has been run from the Montecito due east to the hills, striking the latter more than a mile and a half to the south of the point where the Milpitas issues from them.

The quantity thus included in the official survey exceeds one square league by nearly 400 acres, notwithstanding that the survey does not extend to the west of the Penetencia. The line was no doubt adopted in obedience to the indication of the diseno, which shows by

216 the compass mark that the southern boundary was intended to run east and west. But I think it plain that this indication or call should not be received as controlling.

It is evident that the draughtsman of the diseno supposed that the range of hills ran due north and south, and he has so laid them down on his map. As the tract was to have the extension of one league from north to south, he has bounded it by lines running east and west. But he meant that those lines should run at right angles to the course of the hills.

As, then, the range of hills is found to run to the west of north to the east of south, the obvious intention of the diseno is satisfied by making a corresponding deflection in the course of the side
217 lines so as to preserve their perpendicularity to the mountain range which formed the eastern boundary of the tract.

Again, the southern boundary line is represented as striking the hills at right angles to and at the distance of about fifteen chains to the south of the point of where the Milpitas issues; but if run due east from the Montecito, as in the official survey, it will form with the hills an acute angle and will strike them more than a mile and a half to the southward of the Milpitas. If, however, a line be run from the Montecito at right angles to the course of the hills, it will strike them within a very fewchains of the point indicated on the diseno as the easterly termination of the southern boundary. It will, however, in one respect fail to conform to the diseno, for it will cross the Milpitas twice, leaving a portion of that stream to the south
218 and a portion to the north of it, whereas the diseno represents the line as drawn wholly to the south of the Milpitas. But the points of beginning and of termination of this line will very accurately conform to the indications of the diseno, for it will strike the hills, as before stated, at or near the point represented, and it starts at the Montecito at about tne distance shown on the diseno from the point where the Milpitas loses itself in the plain.

It is not probable that it was intended accurately to delineate the course of the Milpitas. That stream is represented on the diseno as making a considerable bend to the north shortly after leaving the hills, whereas it in fact makes a much more marked bend to the south; at least such is its present course as shown on the topographical map of Stratton.

A number of witnesses were examined to prove the boun-
219 daries of the land actually occupied by Alviso and by Berreyesa, his neighbor on the south, and their declarations as to the dividing line between them. This testimony is, as usual, unreliable and conflicting. On the one side it is asserted that Alviso's possession extended far to the south of the Milpitas and that he gave rodeos south of the house of Berreyesa, who, it is stated, was allowed by Alviso to build upon his land. This last statement is on its face extremely improbable. On the other hand, it is testified that the Milpitas creek was recognised by both as the boundary between them. This again is improbable, for the Milpitas creek is nowhere mentioned as a boundary, and the diseno shows that the line inscribed "Lindero al sur" was drawn to the south of it.

The only safeguide we can adopt in locating the tract is the
220 representation on the diseno, and if that be consulted there does not appear to be much room for controversy.

I think that the southern line should be drawn from the centre of the Montecito at right angles to the general course of the hills. The quantity of one square league may then be completed by increasing the width of the tract towards the east so as to embrace a portion of the foot hills, or towards the west by crossing the Penetencia, at the election of the claimant. An order to that effect will be entered.

Endorsed: Filed October 27th, 1862.

W. H. CHEVERS, *Clerk.*

221 *Order rejecting survey and directing new survey.*

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Saturday, the fifteenth day of November, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* JOSE MARI ALVISO. } No. 37.

This cause came on to be heard on objections to the official survey of the land confirmed to the said Alviso, which survey is shown by the certified copy plat filed November 5, 1860, and counsel for the respective parties having been heard and due deliberation had in the premises, it is now ordered, adjudged, and decreed that said objections be, and the same hereby are, sustained, and that the said official survey be, and the same hereby is, set aside as erroneous.

222 And it is further ordered that the surveyor general of the U. S. for Cal'a cause a new survey to be made of the land confirmed in accordance with this order, and return a plat of the same to this court for its approval.

And it is further ordered that the new survey and location be made as follows: The southern line shall be run from the centre of the "Montecito" at a right angle as near as may be to the general course of the hills and as near as may be to the point shown on the diseno on file in the case, which accompanied the grant, where the line marked "Lindero al sur" strikes the foot of the hills, to which diseno reference is to be had. The northern line shall be the southern surveyed line of the Rancho Tularcitos. The eastern and western lines to be run at the election of the claimant so as to include the quantity of one square league and no more.

223 And it is further ordered that a certified copy of this order be served upon said surveyor general by the United States marshal.

ODGEN HOFFMAN, *Dist. Judge.*

I hereby certify that I have this day served a copy of the within order, (duly certified,) on the U. S. surveyor gen'l by leaving a copy thereof with the chief clerk.

CHARLES W. RAND, *U. S. Marshal.*
Per M. R. GRANT, *Deputy.*

Dated San Francisco, November 17th, 1862.

Endorsed: Filed November 15th, 1862.
W. H. CHEVERS, *Clerk.*

(Here follows plat of location, filed January 17th, 1863, vide pages 284 and 285.)

224 *Letter from U. S. surveyor general.*

U. S. District Court, northern district of Cal'a.

U. S.
vs. } D. C. No. 37.
J. M. ALVISO.

In the matter of the survey of Las Milpitas.

To the Hon. OGDEN HOFFMAN, *U. S. Dis't Judge*:

To accompany the plat of survey filed from this office on the 17th January last, I would make the following statement:

Under the late decree two surveys have been ordered by this office. One on the part of the claimants by deputy Healy; another on the part of the United States by deputy Stratton. As there appeared some difference of opinion as to the construction of the decree, and as each party claimed a right to have a survey under the act of June 2d, 1862, I complied with their request, and so ordered, presuming that your honor would have the better opportunity of judging as to the correct location of the claims, by having both exhibits
225 before you.

Deputy Healy's survey has not as yet been returned to this office, and I propose to place the same on file as soon as possible after the return thereof.

Very respect'y, your obedient servant,
E. F. BEALE, *U. S. Surv'r Gen'l.*

Endorsed: Filed January 22, 1863.
W. H. CHEVERS, *Clerk.*

(Here follows plat, page 225.)

226 *Intervention of Charles Allen et al., and consent.*

In the District Court of the United States, northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } Case No. 37.

The intervention of Charles Allen, Ellen E. Allen and William O'Toole shows to the court that said Charles Allen is the administrator of the estate of Charles White, and the husband of Ellen E. White; that said Ellen E. White prosecuted a claim in this court for the rancho Rincon de los Esteros; that such proceedings were had in this court that on or about day of , said claim was finally confirmed; that said Ellen E. White, now Ellen E. Allen, is the cessionee thereof; that in pursuance of the decree of confirmation the U. S. surveyor general for the State of California caused a survey and plat of said rancho to be made, which was officially ap-
227 proved by him on the 19th day of October, 1858; that in pursuance of the act of Congress of June 14, 1860, entitled An act to amend an act, &c., in regard to the survey, &c., of private L. C., &c., the said sur. general gave public notice (as required by sec. 2 of said act) that he had caused the same to be surveyed and a plat thereof to be made and approved by publishing a notice thereof in the usual form in the San Jose Tribune, a newspaper published nearest said rancho, to wit, at San Jose, Santa Clara co., Cal., and in the San Francisco Herald, a newspaper published in San Francisco, for four weeks, successively, commencing such publication in the month of September, 1860, as will more fully appear by said sur. general's certificate, now on file in his office; that no objection was made to said survey by any person, nor was the same ordered
228 into court; that said survey became final in pursuance of sec. 5 of said act, and on the 20th day of December, 1860, said U. S. surveyor general forwarded a certified copy of said plat, &c., to the General Land Office, at Washington, for a patent; that one of the boundaries of the said rancho, so confirmed to said Ellen E. White, is the Penetencia creek; that on the 11th day of February, 1863, there was filed in this court, in said case No. 37, a plat and survey of the adjoining lands confirmed to said Alviso; that said last-mentioned plat and survey embraces and includes a large amount of land, to wit, about 1,000 acres, more or less, so confirmed to said Ellen E. White and included in said approved survey, of great value, to wit, of the value of $10,000 or thereabouts; that relying upon the frailty of said survey said Ellen E. White has sold a great
229 quantity of land next to said creek to intervenor O'Toole and others; that in truth and in fact the said lands so confirmed to said Alviso do not embrace or include, according to the grant or diseno, any lands so embraced in the said final survey of the said rancho Rincon de los Esteros, and none of such lands should be included in the survey of the lands confirmed to said Alviso.

Wherefore said Charles Allen, Ellen E. Allen, and said William O'Toole pray leave to intervene and object to the confirmation of said survey in case No. 37.

W. W. STOW,
Att'y for Chas. Allen, William O'Toole, &c.

Charles Allen, W. O'Toole, and Ellen E Allen, (formerly Ellen E. White,) by leave of the court first had and obtained, except to the survey and plat filed in this court in case No. 37, entitled "The
230 United States *vs.* Jose Maria Alviso," because said survey and plat are not in accordance with the grant, diseno, or final decree of confirmation in said case No. 37. The claimants are entitled to but one league of land, and according to their title papers, should make up the quantity by including land on the southerly side of Milpitas creek, and not by crossing the arroyo de la Penetencia, or lapping over and taking lands finally confirmed and surveyed to said Ellen E. Allen, *nee* White.

W. W. STOW,
Att'y for Exceptors.

We admit due service of the annexed petition for intervention and exceptions, and consent that the same may be filed.

WILLIAMS & THORNTON.
WM. H. SHARP, *U. S. Att'y*,
By JNO. B. WILLIAMS,
S. O. HOUGHTON.

Endorsed: Filed March 5th, 1863.

W. H. CHEVERS, *Clerk.*

231 *Claimant's exceptions to modified survey.*

In the District Court of the United States in and for the northern district of California.

THE UNITED STATES
vs.
THE HEIRS OF JOSE MA. ALVISO. } No. 37.

And now come the claimants in the above-entitled cause, and except to the modified survey returned into this court by the surveyor general of the United States for the State of California, under order heretofore entered in this cause, and assign as ground of exception that neither of said surveys are in accordance with the original grant, diseno, or final decree of confirmation, or decree directing modification of former survey. That one of said surveys overlaps upon a finally surveyed claim of other parties; and that the other survey locates this claim, or a large portion thereof, within and upon the hills adjoining, instead of completing the quantity confirmed to these claimants by including lands to the south of Milpitas creek.

S. O. HOUGHTON,
Att'y for Claimants.

232 Endorsed: Filed March 6, 1863.

W. H. CHEVERS, *Clerk.*

Deposition of James T. Stratton.

In the District Court of the United States for the northern district of California, in land cases.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } Dist. Court No. 37; land com. No. 141.

Be it remembered, that on this 6th day of April, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared
233 James T. Stratton, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows, his evidence being taken by consent.

Present: W. H. Sharp, U. S. att'y, for the U. S.; Stow & Patterson for int. Allen; and S. O. Houghton, esq., for claimant.

Questions in behalf of the United States.

Question 1st. Are you the same James T. Stratton who has heretofore been examined in this case?

Ans. I am.

2. When you made your survey in this case, in ascertaining the centre of the Montecito, did you or not understand from Mr. James Murphy whether any portion of that Montecito had been cut away?

234 (Objected to as incompetent and heresay, and because no proper foundation has been laid for the question.)

Ans. He stated, while I was makiug the survey to determine the centre of the Montecito, that a very few scattering bushes only had been grubbed up near its southern extremity, but that they never extended any further in a southerly direction than a point which I assumed to be its southerly extremity.

(Answer objected to as incompetent and hearsay.)

3. In running the south line of your survey, how did you construe the qualification "as near as may be," found in the order directing a new survey?

Ans. It was undoubtedly intended to cover the ground of any discrepancy met with in following the three calls in the descrip-
235 tion, which are the centre of the Montecito, the general line, the base of the hills, and the point at their base a short distance south of the Milpitas creek, where it issues from the mountains. It so happens that the three calls do exactly agree, as the southerly boundary of my survey runs exactly at right angles to the general

line of the base of the mountains, passing exactly through the centre of the Montecito and cutting the line of the base of the mountains exactly at the point indicated on the copy of the diseno furnished me by the U. S. surveyor general.

4. The order directs the eastern and western lines to be run at the election of the claimants. State why you run into the hills for quantity.

Ans. The claimants represented by Jose G. Uridias, who has the principal charge of the rancho, refused to elect, expressing himself as dissatisfied with my location of the southern line, and I did as I pleased.

236 (Each of the foregoing questions and answers objected to as irrelavant, incompetent and heresay.)

Cross-examination waived.

Deposition closed.

JAS. T. STRATTON.

Subscribed and sworn to this 6th day of April, A. D. 1863, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed April 6th, 1863.

W. H. CHEVERS, *Clerk.*

237 *Deposition of James Murphy.*

In the District Court of the United States for the northern district of California, in land cases.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } Dist. Court No. 37; land com. No. 141.

Be it remembered, that on this 8th day of April, A. D. 1863, at the city of San Francisco, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared James Murphy, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows.

Present: W. H. Sharp, U. S. att'y, for the U. S.; Stow &
238 Patterson for int. Allen; S. O. Houghton, esq., for claimant.

Witness examined on his *voir dire.*

Questions by counsel for claimant.

Ques. 1. Do not the lines of the land claimed in this case extend over and include a portion of the tract of land which you claim to own?

(It is admitted by counsel for the U. S. that the witness occupies and claims under the United States a tract of land, a portion of which is included in the survey made by A. W. Thompson, and which survey has been rejected by the court.)

Ans. When I went there first they did not claim it, but since I went there the surveys have extended over a portion of it.

2. Was not an action for the recovery of the possession of a tract of land claimed to be a part of the Milpitas rancho instituted
239 against you by John Trimble, and have you not, by reason of the institution of that suit, surrendered to said Trimble a possession of the land claimed by him therein?

Ans. Yes.

3. Do you not yet claim to own that tract of land and intend to assert your claim to it?

Ans. I do.

Counsel for claimants objects to any testimony of this witness, upon the ground that he has shown by his testimony that he has a direct interest in the result of this controversey.

Examination in chief.—Questions by counsel for the U. S.

Ques. 1. What is your name, age, and place of residence?

Ans. My name is James Murphy, my age is about fifty-four years; I reside in Santa Clara county.

240 2. Do you know the place called the Montecito, through which the south line of the official survey in this case runs?

Ans. I do; I have known the Montecito since 1849; my house is about 700 yards from it.

3. In the deposition of Henry Robinson, taken March 31st, 1863, he states that the south end of the Montecito, to the extent of some seventy-five yards had been grubbed or ploughed out by you or under your direction. Please state whether or not such is the fact.

Ans. The montecito, or thicket, through which the south line of the survey runs, has never been cut away by me nor by any one else that I know of. Immediately south of the montecito runs a road through an opening varying from fifteen to one hundred yards
241 in width. South of this road grew a thinner and different kind of thicket from that composing the montecito, and some of this last-mentioned land has been cleared away by me, and some again still further south.

4. How far, in a southerly direction, does this particular thicket or kind of brush extend, or did extend, when you first knew it?

Ans. It extends about two miles in that direction, with occasional openings.

5. How much of the montecito, if any, has been cut away on the north side?

Ans. There has none of the bunch that I call the montecito been cut away on the north, but some straggling growth in that direction has been.

Cross-examination.—Questions by counsel for the U. S.

Ques. 6. State if the map now shown you, marked Exhibit
242 Murphy, No. 1, was drawn by you to represent the thicket of brush or montecito at the southern corner of the Rancho Milpitas?

(Objected to, because the sketch was drawn by the witness with no intention to have it attached to his deposition.)

Ans. It was.

7. Did you not draw the long, straight line on that exhibit passing through the sansal, to represent the location of the line recently run by Mr. Stratton?

Ans. There are two long, straight lines, one of which represents the Stratton line, which is so marked.

8. Was there not a good deal of brush running south from the southern end of the place you have marked Sansal?

243 Ans. There was some very thin, scattering brush along there, but there was considerable of a thicket about 75 yards from there. That thicket was not over a rod and a half wide and perhaps six rods long.

9. Will you please mark on that map, as near as you can, the location of your house, and also the northern and southern sides of the map?

(Objected to, because the witness has already stated to the counsel present that he did not intend the map to be a part of his examination.)

Ans. No, sir; I am not a draughtsman to make a map to go before the court. I just drew the map to give you an idea of where the sansal is.

Deposition closed.

JAMES MURPHY.

Subscribed and sworn to this 8th day of April, A. D. 1863, before me.

W. H. CHEVERS, *U. S. Com.*

244 (Here follows map, page 244.)

Endorsed: Filed April 9th, 1863.

W. H. CHEVERS, *Clerk.*

245 *Deposition of W. L. Adams.*

In the District Court of the United States for the northern district of California.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } In land cases.—Dist. Court No. 37; land com. No. 141.

Be it remembered, that on this 8th day of April, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared William L. Adams, a witness produced in behalf of the United States in the above entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: W. H. Sharp, U. S. att'y, for the U. S.; Stow & Patterson for int. Allen, and S. O. Houghton, esq., for claimant.

246 *Questions in behalf of the United States.*

Question 1. What is your name, age, and place of residence?

Ans. My name is William L. Adams. My age is 28 years. I reside in Santa Clara county.

2. Do you know the place called Montecito, not far from the house of Mr. James Murphy? if so, how long have you known it?

Ans. I do. I have known it since 1853. I have known the same place since 1846, but did not know its name until 1853.

3. When did you last see the Montecito?

Ans. Last Sunday.

4. State whether that Montecito has been cut away any since you first knew it, and if so, describe in what manner?

247 Ans. It has been cut away on the side towards the road running from Oakland to the Mission San Jose, which is on the west 270 yards. On the north it has been cut away altogether about 350 yards from where the brush is green at present. On the south there has been none cut away to my knowledge, but there are openings there varying from sixty feet to ten rods in width. About 700 yards from there there was a thicket, which has disappeared. This thicket was between the Montecito and the Chaboya ranch. A grove of willows, etc., about 800 yards from the Montecito, between it and the hills, has been cut away and disappeared.

5. Is there or not a road running through the first opening south of the Montecito?

Ans. There was formerly, but at present it is fenced in.

6. How long ago did you first know of that road?

248 Ans. I knew it in 1852.

7. In 1852, did that road have the appearance of an old or a new road?

Ans. It appeared to be an old road.

12. Cannot you give some idea of the extent it has been cut away on the south side?

Ans. Probably about 75 yards to my own knowledge—a rough guess at that.

Direct examination resumed—Questions by counsel for claimant.

Ques. 13. Do you know the location of a picket fence running from a point on the Penetencia creek, a short distance south of the house where James Murphy now resides in an easterly direction towards the hills?

Ans. I do.

14. Please state how far that montecito or thicket of brush was from the place now occupied by that fence when you first went to reside in that neighborhood; that is to say how near did that
256 thicket approach the place where said fence now stands.

Ans. I cannot state the distance; I have already stated that I thought about 75 yards of the Montecito had been cut down to my knowledge, and I have no doubt there was more of it. I ploughed that field this season and encountered stumps which had not been grubbed up very near the fence indicated.

Cross-examination.—Questions by counsel for the U. S.

Ques. 15. How far is it from the north end of the Montecito to the house of Murphy?

Ant. About three quarters of a mile; I should suppose it may be a little further.

Deposition closed.

HENRY ROBINSON.

Subscribed and sworn to this 31st day of March, A. D. 1863, before me. W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed April 24, 1863.

W. H. CHEVERS, *Clerk.*

257 *Deposition of F. Munoz.*

In the District Court of the United States for the northern district of California, in land cases.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } Dist. Court. No. 37. Land com. No. 141.

Be it remembered, that on this 31st day of March, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Francisco Munoz,

a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California; who, being duly sworn, testified as follows—his evidence being interpreted by Louis M. Prince, a sworn interpreter.

258 Present: S. O. Houghton, esq., for claimant; Stow & Patterson, for int. Allen, and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Francisco Munoz; I am forty years of age; I reside in the city of San Jose.

2. Are you acquainted with the Milpitas rancho, in Santa Clara county, granted to Jose Maria Alviso? If so, how long have you known it?

Ans. I am; I have known it since 1849.

3. Do you know the place called Montecito, in the southwestern part of the said rancho?

Ans. I have known it as long as I have known the rancho.

259 4. How does its present extent compare with its extent when you first knew it? Is the Montecito larger or smaller?

Ans. It is much smaller.

5. Which side of it has been cleared away or disappeared?

Ans. The side next James Murphy's, on the southeast.

6. How much further did it extend in a southerly or southeasterly direction?

Ans. About 400 varas; perhaps a little more.

Cross-examination.—Questions by counsel for the U. S.

Ques. 7. What was the cause of the disappearance of the southeastern portion of the Montecito?

Ans. I was cut down by James Murphy.

260 8. Was any portion cut down by any other than James Murphy, to your knowledge?

Ans. No.

9. Does the Montecito exist now as it did in 1849, except the alteration that you have stated was made by Mr. Murphy?

Ans. Much of it has been cut down, but the Montecito exists as it did in 1849.

10. Has any of it been cut down by any person other than James Murphy?

Ans. No, sir.

11. When did you come to California, and from what country did you come?

Ans. I came from Chile in 1849. I have lived in Santa Clara county ever since, on the Milpitas rancho, except one year,

261 when I lived in Santa Cruz. I have been employed as mayor domo, and in other capacities on the rancho. I am no longer in their employ.

Deposition closed.

FRANCISCO MUNOZ.

Subscribed and sworn to this 31st day of March, A. D. 1863, before me.

W. H. CHEVERS,
U. S. Com'r.

Endorsed: Filed April 24, 1863.

W. H. CHEVERS, *Clerk.*

262 *Deposition of J. A. Chaboya.*

In the District Court of the United States for the northern district of California, in land cases.

THE UNITED STATES *vs.* JOSE MARIA ALVISO. } Dist. Court No. 37; land com. No. 141.

Be it remembered, that on this 31st day of March, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the districts of California, take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Jose Antonio Chaboya, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows—his
263 evidence being interpreted by Louis M. Prince, a sworn interpreter.

Present: S. O. Houghton, esq., for claimant; Stow & Patterson, for int. Allen, and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Jose Antonio Chaboya; I am about 30 years of age; I reside on the Alviso rancho, in Santa Clara county.

2. Are you acquainted with the Miltipas rancho, in Santa Clara county, granted to Jose Maria Alviso? If so, how long have you known it?

Ans. I am; I have known the rancho over 20 years, ever since I could ride on horseback.

3. Do you know the place called Montecito, in the south-
264 western part of the said rancho?

Ans. I do; I have also known it for about 20 years.

4. How does its present extent compare with its extent when you first knew it? Is the Montecito larger or smaller?

Ans. I understand it to have been much larger before, as the wood has been cut away.

5. Which side of it has been cleared away or disappeared?

Ans. Towards the south.

6. How much further than it does now did it extend in a southerly direction?

Ans. More than 400 varas, I should say.

Cross-examinxtion.—Questions by counsel for the U. S.

265 Ques. 7. What was the cause of the disappearance of the Montecito on its south side?

Ans. It has been cut down and burned.

8. By whom?

Ans. I did not see who has taken it away, but it is not the same now as when I first knew it.

9. Has not the Montecito been cut away on the north, east, and west sides also?

Ans. I think it has.

10. Were you acquainted with the Milpitas ranch before the Americans took possession of the country?

Ans. I was.

11. Was not the rancho bounded on the south by the lands of Nicolas Bereyesa?

(Objected to as new matter.)

266 Ans. When I knew the ranch, it was bounded by the rancho of Joaquin Higuera or Pala ranch.

12. Did not Nicolas Bereyesa live between the Milpitas rancho and the Pala ranch?

Ans. He did.

13. Whose land did Nicolas Bereyesa live upon?

Ans. The land of Jose Maria Alviso.

Direct examination resumed.—Questions by counsel for claimant.

Ques. 14. Look at Exhibit Stratton No. 1, and show which end of the Montecito has been cut away?

Ans. On the side to the south.

15. Has any of it been cut away at the northern end?

267 (Objected to as having been already answered by the witness.)

Ans. Some trees had been cut down around the Montecito, as it now exists.

Deposition closed.

his
JOSE ANTONIO × CHABOLLA.
mark.

Sworn to and subscribed March 31, 1863, before me.

W. H. CHEVERS,
U. S. Comm'r.

Endorsed: Filed April 24, 1863.

W. H. CHEVERS, *Clerk.*

268 *Deposition of C. T. Healy.*

In the District Court of the United States for the northern district of California, in land cases.

THE UNITED STATES
vs.
JOSE MARIA ALVISO. } Dist. Court No. 37; land com. No. 141.

Be it remembered, that on this 31st day of March, A. D. 1863, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the Circuit Court of the United States for the districts of California, to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Chas. T. Healy, a witness produced in behalf the claimant in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle private land claims in the State of California, who, being duly sworn, testified as follows:

269 Present: S. O. Houghton, esq., for claimant; Stow & Patterson, for int. Allen, and W. H. Sharp, U. S. att'y, for the U. S.

Questions in behalf of the claimant.

Ques. 1. What is your name, age, place of residence, and occupation?

Ans. My name is Charles T. Healy; I am of lawful age; I reside in San Jose; my occupation is that of a surveyor.

2. State if you have made a resurvey of the Rancho las Milpitas, in Santa Clara county, under the order of the United States District Court, directing a resurvey thereof. If you have done so, state whether you found a thicket of brush or montecito at or near the most southern corner of that rancho; and state if you made then or since any examination to enable you to determine whether that thicket was ever of greater extent than it now appears.

270 Ans. I have made a survey of the Milpitas rancho, under instructions from the U. S. surveyor general; I found a thicket, called the montecito, near the most southern corner. I do not know of my own knowledge whether that thicket is changed in extent or not; I was told when upon the ground, by parties who had resided in the vicinity for many years, that the Montecito formerly extended much further to the south, but as it is now a cultivated field, I could discover no traces.

3. Are you aquainted with James Murphy?

Ans. I am.

4. Where does he reside?

Ans. He resides near the Milpitas rancho.

5. Do you know whether or not he is the party resisting the

271 first official survey in this case, in the name of the United States, through counsel employed by him?

(Objected to as irrelavant.)

Ans. I cannot answer positively as to counsel employed by him, but there is no doubt about his resisting the said survey.

6. Did you have any coversation with him in regard to the said montecito? If so, what was it?

(Objected to by the U. S. as calling for hearsay evidence, and because Mr. Murphy is within the jurisdiction of the court, and can be called and examined as a witness himself.)

Ans. I did; he first told me that it formerly extended a few rods further to the north than now, and afterwards, as I was measuring towards the southern extremity of the Montecito, for the pur-
272 pose of ascertaining its length and breadth, as I included a small growth inside of his field, he said that if I considered that the Montecito, I might go on to the other willows, lying about half a mile to the south, as they once extended in that direction a great distance. He did not say, that I remember, how far.

7. Look at the plat of survey, made by James T. Stratton, filed in this case Jan'y 16th, 1863, and state whether the said montecito is correctly marked on said map?

Ans. It is; except that it is longer from north to south than is represented on the map.

8. On the plat of survey, made by yourself, filed in this case Feb'y 11th, 1863, the said montecito is not marked. How does your southern line, in its passage through said montecito, correspond
273 with Stratton's line through the same? Confine your answer, if you please, to so much of said lines as pass through the montecito.

Ans. They correspond very nearly at that point. I think my line is a few feet further south than his.

9. Is there not a sansal to the north of and adjoining the said montecito?

Ans. The northern portion of the Montecito is almost detached from the main body, and is composed mostly of willows, while the main body of the Montecito is composed of different kinds of brush and shrubs, with the names of which I am not familiar.

10. In ascertaining the middle line of the Montecito, did you include the said willows as a portion of it?

Ans. I did.

11. Had you left out the willows as not being a part of the
274 Montecito proper, how much further would it have thrown your middle line south?

Ans. I think about five chains.

12. How much more valley land would your survey then have included?

Ans. About seventy acres, provided the line was run to the same point at the foot of the mountains.

13. Who were the persons in the vicinity who informed you that a portion of the Montecito on the south had been cleared away?

Ans. I do not remember the names of all of them, there being several on the ground. I remember Mr. James Murphy, also Mr. Robinson, and I think Mr. Trimble. I have since been told by Fran-

Subscribed and sworn to this 31st day of March, A. D. 1863, before me.

W. H. CHEVERS.
U. S. Com.

Endorsed: Filed April 24th, 1863.

W. H. CHEVERS, *Clerk.*

283 *Final decree.*

At a stated term of the District Court of the United States for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the eighth day of September, in the year of our Lord 1863.

Present: Hon. Ogden Hoffman, dis't judge.

THE UNITED STATES
vs.
HEIRS OF JOSE MA. ALVISO. } No. 37.

This cause came on to be heard on objections to the surveys of the land confirmed herein, made in pursuance of the order of the court entered November 15, 1862, and shown by the certified copy plats filed January 17, 1863, and February 11, 1863; and counsel for the respective parties being present, and due deliberation had in the premises, it is ordered, adjudged, and decreed that the survey made by deputy C. T. Healy, and shown by the plat filed February 11, 1863, is not a good and valid survey, and the same is
284 hereby disapproved. And it is further ordered, adjudged, and decreed that the survey and location of the land confirmed, made by deputy James T. Stratton, the field-notes whereof were approved by the surveyor general of the United States for California, on the 13th January, 1863, and which survey is shown by the certified copy plat filed in the cause January 17, 1863, is a good and valid survey, and the same is hereby approved. And it is further ordered, adjudged, and decreed that the said certified copy plat, filed January 17th, 1863, and marked "approved Sept. 8th, 1863, Ogden Hoffman, dist. Judge," be attached to, and made part of, this decree, for a more full and particular description of the four thousand four hundred and fifty-seven 66-100 acres of land now finally confirmed to the claimants herein.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed Sept. 8, 1863.

W. H. CHEVERS, *Clerk.*

(Here follows map, page 284.)

285 *Order granting appeal.*

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 18th of No-

vember, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable Ogden Hoffman, district jndge.

THE UNITED STATES
vs.
JOSE MARIA ALVISO and HORACE W. CARPENTIER, Charles Allen, Ellen E. Allen, and William O'Toole, intervenors. } No. 37.

In the matter of the survey and location of the Rancho Milpitas.

This cause having come on to be heard on objections to the survey and location of the land heretofore confirmed to the said Jose Maria Alviso, claimant, and the court having by its decree entered November 15th, 1862, ordered a modification of the said survey, and
286 by its final decree, entered on the eighth day of September, 1863, approved said modified survey, now on motion of said claimant, by his attorney, it is ordered that an appeal, on behalf of said claimant, from said final decree be, and the same is hereby, granted, and that a certified transcript of the record in said cause be sent to the Supreme Court of the United States without delay.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed November 18th, 1863.

W. H. CHEVERS, *Clerk.*

287 *Order granting appeal.*

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 23d day of February, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
JOSE MARIA ALVISO and H. W. CARPENTIER, Charles Alllen, Ellen E. Allen, and William O'Toole, intervenors. } No. 37.

In the matter of the survey and location of the Rancho "Milpitas."

This cause having come on to be heard on objections to the survey and location of the land heretofore confirmed to the said Jose Maria Alviso, claimant, and the court having by its decree entered November 15, 1862, ordered a modification of the said survey, and
288 by its final decree entered on the 8th day of September, 1863, appeared said modified survey, now on motion of said claimant, by his attorney, it is ordered that an appeal on behalf of said claimant from said final decree be, and the same is hereby, granted,

vember, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
JOSE MARIA ALVISO and HORACE W. CARPENTIER, Charles Allen, Ellen E. Allen, and William O'Toole, intervenors. } No. 37.

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286 by its final decree, entered on the eighth day of September, 1863, approved said modified survey, now on motion of said claimant, by his attorney, it is ordered that an appeal, on behalf of said claimant, from said final decree be, and the same is hereby, granted, and that a certified transcript of the record in said cause be sent to the Supreme Court of the United States without delay.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed November 18th, 1863.

W. H. CHEVERS, *Clerk.*

287 *Order granting appeal.*

At a stated term of the District Court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Tuesday, the 23d day of February, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
JOSE MARIA ALVISO and H. W. CARPENTIER, Charles Alllen, Ellen E. Allen, and William O'Toole, intervenors. } No. 37.

In the matter of the survey and location of the Rancho "Milpitas."

This cause having come on to be heard on objections to the survey and location of the land heretofore confirmed to the said Jose Maria Alviso, claimant, and the court having by its decree entered November 15, 1862, ordered a modification of the said survey, and
288 by its final decree entered on the 8th day of September, 1863, appeared said modified survey, now on motion of said claimant, by his attorney, it is ordered that an appeal on behalf of said claimant from said final decree be, and the same is hereby, granted,

and that a certified transcript of the record in said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed February 23d, 1864.

W. H. CHEVERS, *Clerk.*

289 I, W. H. Chevers, clerk of the District Court of the United States for the northern district of California, do hereby certify that the annexed and foregoing two hundred and eighty-eight written pages, consecutively numbered, together with the maps and plats included therein, exhibit a full, true, and correct transcript of the record of proceedings before the late board of U. S. land commissioners, as the same is on file in my office, and of the papers, evidence, pleadings, orders, opinions, and decrees now on file in my office in the cause of The United States *vs.* Jose Maria Alviso, No. 37.

In wituess whereof, I have hereunto set my hand and affixed the seal of said court this 28th day of September, A. D. 1864.

[SEAL.] W. H. CHEVERS, *Clerk.*

Filed November 11, 1864.

In the Supreme Court of the United States.

JOSE ALVISO'S HEIR,
vs.
THE UNITED STATES. } *No.* *December*, 1868.

Appeal from the District of California.

Jose Alviso filed his petition before the commissioners in California, claiming one square league of land as having been duly granted to him under the Mexican Government, prior to, and being in his possession and occupation at the time the United States acquired title to California.

It was duly confirmed to him by the commissioners on the 14th day of March, 1853, (p. 22,) and there is no dispute as to his title under said grant and confirmation.

The only controversy between the parties is as to the location; the original survey having been assailed by two parties claiming to be coterminous proprietors, and intervening for the adjudication of their respective rights so far as they are interfered with by that survey.

The original application of Alviso to the Mexican Authorities was for half a league of land according to a certain "desino," which is made an exhibit in the cause, and will be found opposite to page 5. A petition for an enlargement of the grant was presented by him, accompanied by a second desino, which also is made an exhibit, and will be found opposite page 16, and the grant is to be ascertained by these two "desinos."

Evidence has been taken by both parties to show the occupation, and enjoyment of said Alviso, and his cotermi-

nous proprietor to the south, where the dispute lies. Like most of the evidence in such cases the contradictions are flat, and irreconcilable to a degree that the mind is left in exceeding doubt whether there was any exclusive occupation such as is required to give title, by either of the parties, of the portion of the land in controversy, and whether in that wild country it was not used to a great extent indiscriminately for pastoral purposes by any one who had horses or cattle to graze. The preponderance and weight of the testimony goes to show that Alviso claimed the title to the land, while his neighbor Bereyesa, by his permission and license, occupied it subordinate to that title.

This is consistent with the desino, and with certain established facts, which are irreconcilable under any other theory; and especially that there is no evidence in the record that Bereyesa, ever had a grant from the Mexican Government, or ever sought any confirmation from the American Government.

It is conceded that the northeast corner of the grant to Alviso abuts on land previously granted to Higuera, and afterwards confirmed to Higuera's heirs, the land being known as Tularcitos, and the point of beginning is definitely fixed. Thence it runs in a line east of south according to the range of the hills lying east of it. The distance is not given; but it runs past a creek issuing out of the hills, and known by the name of Milpitas, then leaving that line it runs west or westwardly to and through a thicket (Montecito) till it strikes the stream called Penitencia; thence either with that stream, or in a right line until it intersects the southern line of the land, Tularcitos, confirmed to Higuera. The questions are, what is the course and distance of the first and second lines as thus indicated.

It is assumed by the Court below that the first line runs S. S. E. nearly; that the next line or southern boundary leaves it at a right angle and runs westwardly to the Montecito and through it to the Penitencia, and thence westwardly

with the Penitencia till it intersects a line drawn west from the begining. But as this would not give near the quantity of land contained in the grant, he has directed the eastern boundary to be carried further east into the hills, until the quantity granted is secured and thus carries the place of beginning far north and east of the true place.

The opinion and order of survey, at p. 61, 62, directs that "the southern line shall be run from the centre of the Montecito, at a right angle, as nearly as may be to the general course of the hills, and as near as may be to the point shown on the desino on file in the case, which accompanied the grant, where the line marked "Lindero al sur," strikes the foot of the hills, to which desino reference is to be had. The northern line shall be the southern surveyed line of the Rancho Tularcitos. The eastern and western lines to be run, at the election of the claimant, so as to include the quantity of one square league, and no more.

Two surveys were made under this order; one of them extended the southern line for quantity to the west. This line interferred with a prior grant and confirmation to Ellen White, the eastern boundary of which was the Penitencia Creek, and the line then run, extended across, and embraced that creek, and a considerable body of land west of it.

The other survey was extended by the surveyor, of his own will, without any authority from the Claimant, to the east, so as to throw nearly one-third of the grant to Alviso into the hills. This last survey was confirmed, and from decree this appeal is taken.

The errors in the decree following the opinion and order above quoted are:

1. The Judge assumes that the southern boundary line is to leave the eastern boundary line at a point at which the former line, starting from the centre, or near the centre of the Montecito, and drawn at right angles to the eastern line would strike it.

2. That, for quantity, that southern line is to be extended in a right line, into the hills.

The petition of Alviso, at p. 10, is for "the place or sitio of Las Milpitas," which is where Ignacio Higuera served. Again, same page, it is "land belonging to the ayguntamiento of San Jose," which, together with a map of the place referred to, he transmits for the purpose of soliciting the grant in fee of the aforesaid land.

The proofs taken, p. 12, 13, are that the land "is a league, more or less, in each direction," or, "about one league in each direction."

At p. 19, is the translation of the record of title, "the boundaries are one leage from north to south, and a half league east to west," "the land granted, is one league long, and half a league wide, equal to half a league square, as explained by the map which goes with the espediente. And, on page 20, we have the note, on the 2d of October, of the same year, an increase of half a league *on the west was added*, so as to form a square league."

The desino opposite page 17, original, (bottom of page 5 printed record,) shows that the northeastern corner (A) is where Ignacio Higueras' land lies, and at some distance from the hills; that between the line running south, or in a southwardly direction from that point, and the base of the hills, there was a settlement and houses; that line first crossed a creek or arroyo which was sometimes dry, and then crossed another creek conceded to be the Milpitas. Now according to the proof, then taken, that line was about *one league, more or less*—was, by the record of title "one league long." Thence, by the desino, it was *west* to a Montecito by a line marked as the southern line. Here then are certain land marks which cannot be mistaken. The Judge in his decree says this second line is marked as running due west, when it is clear it ought to run at right angles from the first line. But the desino shows it begins *south* of the Milpitas

creek, and so far south of it that, being run straight to the Montecito, it is all the way south of and includes that creek. The course and distance must, unless there be some plain mistake, yield to the natural land marks; to wit, the two creeks to be crossed with the first line, and the second to be so run that it shall include the second creek and strike the Montecito; and it must extend so far as to embrace a square league at least west of the first line.

The second desino, page 49, original, bottom of page 16 printed record, confirms this. The eastern line begins at the same point, and runs *east of south*, following the course of the hills; and the second line is due west to the Montecito.

Both of them show houses between the first line and the base of the hills; both of them show that the first line crosses the Milpitas creek, or, as it was then called "Arroyo del Firado Martinez;" both of them show that this creek is within the boundaries of the grant; both of them show a right line, from the termination of the first line, running west or nearly west to a Montecito; both of them show the Arroyo de San Jose, (now the Penitencia creek,) as the western boundary; the second has the Northern line extended across this creek; the first shows the same line, running in the same direction, but stopping at the limit of the mission of San Jose; the Linea Divisoria.

Neither of these maps pretend to give the outlines of a survey according to the grant. In neither is the figure a square so as to embrace a league square as granted; but both are parrallelograms, the north and south lines being nearly as long again as the east and west lines; but both of them contain the same significant marks or calls, and boundaries, from which it is impossible to separate them. Following the grant, the first line must run a straight course in the same direction with the hills, and must run a league, more or less; and taking the map on which the grant is founded it must run so far west of the hills as to have the

old houses between it and the hills; it must cross the two creeks named so far that a right line drawn from its terminus, will strike the Montecito, and the survey must embrace about a square league, not necessarily a league square. These marks are equal in their force and character to calls in a survey, and must be followed. Course and distance must give way to them unless there is a palpable error in them. The first line, therefore, must be extended so as to embrace about a square league, making the Penitencia creek the western boundary, and the second line passing through the Montecito to that creek. But, it may be asked, what it to become of Bereyesa, who has intervened, and who is the only intervenor in the case? And at what point in the Montecito is the line to strike.

The answer is obvious. It does not appear any where in the record that Bereyesa had any grant; and if he had there is no evidence of its confirmation. Besides it is quite clear that Bereyesa had no grant at the date of the grant to Alviso, and if so, and he afterwards obtained one, it must yield to the elder grant. As to the second, there is conflicting proof about the Montecito. That it was formally considerably larger, and stretched further south than at the time of any of the surveys is satisfactorily shown by the testimony of Stratton, p. 65, who says, in answer to the second question, "he (Murphy,) while I was making the survey to determine the centre of the Montecito, said that a very few scattering bushes only had been grubbed up near its southern extremity; but that they never extended any further in a southernly direction than a point which I assumed to be its southern extremity."

Henry Robinson, p. 69, 70. Ans. 6th. The Montecito was larger when he knew it in 1851, than it is now. 7th. The South end has disappeared. 9th. It was grubbed out by Murphy, a witness who was examined by the U. S. 10th. He has been gradually clearing it away since 1851. 12th.

probably about 75 yards. 14th. I have no doubt that there was more of it.

F. Munoz, p. 71. 3d. Has known it since 1849. 4th. It is much smaller than it was then. 5th. It has been cleared away on the side near to James Murphy's. 6th. About 400 varas.

J. A. Chaboya, p. 72. Ans. 2d. Has known it about 20 years. 4th. It was much larger then, the wood has been cut. 5th. Towards the south. 6th. More than 400 varas.

C. T. Healey, Dep. Surv., p. 74–5. Ans. 2d. I was told by many persons on the ground, by parties who had resided in the vicinity for many years, that the Montecito formally extended much further to the South, but as it is now a cultivated field, I could discover no traces.

The eastern line must therefore be extended, until it intersects a right line running from the western boundary now established on the Penitencia creek, and running east or eastwardly, through the Montecito, as it was in 1853, as the southern boundary line, so as to make an area of one square league. It must run so far, that this second or southern line shall embrace all of the Milpitas creek lying west of the first line. In this way, and this way only, can the calls of the original desino be gratified.

It cannot be extended across the Penitencia, because the land west of the creek has already been confirmed to Ellen White.

It cannot be extended to the east, because the desino plainly exhibits land, and houses between the eastern line and the hills, nor can it be extended north, because of the confirmation to Higueras' heirs.

It must be extended to the south, both to gratify the calls of the desino, and because there is no land on that side granted and confirmed to any one.

For these reasons the decree ought to be reversed.

JOS. H. BRADLEY,
Solicitor for Appellant.

In the Supreme Court of the United States.

DECEMBER TERM, 1868.

JOSE MARIA ALVISO
vs.
THE UNITED STATES. } No. 3.

STATEMENT OF THE CASE.

This is an appeal by the claimant from the judgment of the U. S. District Court for the Northern District of California, in the matter of the final survey of the rancho named "Milpitas," finally confirmed to him by the concurring judgments of the United States Land Board and of the United States District Court.

The judgment of the District Court reads as follows:

"It is by the court hereby ordered, adjudged and decreed that the said decision [of the Land Board] be and the same is hereby in all things affirmed, and it is likewise further ordered, adjudged, and decreed, that the claim of the appellees is a good valid claim, and that the said claim be and the same is hereby confirmed *to the extent and quantity of one square league*, being the same land described in the grants, and of which the possession was proved to have been long enjoyed: *Provided*, That the said quantity of one square league now confirmed to the claimants be contained within the boundaries called for in the said grants and the map to which the grants refer; and *if there be less than that quantity* within the said boundaries *then we confirm to the claimants* THAT LESS QUANTITY."
—Printed record, p. 24.

The language of the decree is copied almost *verbatim* from the decree of the Land Board.—Ib., p. 22.

Thus it appears in the outset that the quantity, not exceeding one league, is to be determined *by the boundaries*, and *not* the boundaries by the *quantity*.

The original grant had been for *half a league*, which was subsequently increased to *a league*, within the same general boundaries. The decrees of the Land Board and of the District Court were therefore framed in this cautious manner to provide for the *possible* and even *probable deficiency of quantity* which was likely to arise.

There have been three official surveys of this grant, which may be briefly designated as 1st, the "Thompson" survey, 2nd, the "Healy" survey, and 3d, the "Stratton" survey.

1st. THE "THOMPSON SURVEY."—Exceptions to this survey were filed by the United States and by the owners of the Berryesa grant, lying immediately south of the Alviso grant, upon two general grounds: 1st. Excess of quantity included in the survey; and 2nd. Encroachment on the boundaries of the Berryesa grant to the extent, at the lowest estimate, of about 1,000 acres, viz: all that part of the land included in the survey lying south of the Milpitas creek, which stream was claimed by the owners of the Berryesa grant to be the dividing line between the Alviso and the Berryesa grants.—Printed record, p. 26, 27, 29, 30.

Testimony was taken upon both sides, and after argument this survey was set aside and a new order was made, directing a new survey, and also defining the principles upon which it should be made. The opinion of the court and the order made in pursuance thereof will be found in the printed record, at pp. 59, 62, to which it will here be sufficient to refer.

The correctness of this survey is not now insisted upon by the appellant. It may therefore be regarded as *abandoned by common consent*. The points in dis-

pute relate mainly to the principles involved in the opinion and order of the court directing a new survey, and to the manner in which that order was executed.

2. THE HEALY SURVEY.—Under the order of the court the Surveyor General caused *two* surveys to be made; one *on the part of Alviso*, by Deputy Surveyor Healy, and another on *the part of the United States*, by Deputy Stratton.—Printed record, p. 62.

In consequence of the opinion expressed by the court, and of the permission given in the new order of survey, that the "eastern and *western lines* might be run *at the election of the claimants*," &c.—printed record, p. 62—Healy included in his survey about 1,000 acres of land lying *west* of the Penetencia creek. Why this was done is thus explained by Healy in his testimony:

"Q. 27. Why did you include in your survey lands lying *west of the* Penetencia creek?

"Ans. I was required to do so by the claimants, the order permitting them to make such selection."—Printed record, p. 76.

Against this survey Chas. E. Allen and others, owners of the "Rancho Rincon de los Esteros," intervened and filed objections, on ground that the Penetencia creek was one of the boundaries of their grant, that it had been finally surveyed in that way, making it their eastern boundary, and that no objections having filed to that survey it had became final under the survey act of June 14th, 1860, and that therefore the Healy survey was erroneous, because it included about 1,000 acres of their land.—Ib., pp. 63, 64.

Upon making this discovery, the claimants in this case filed exception to this survey, on the same ground, viz: "That one of said surveys *overlaps upon a finally surveyed claim of other parties.*"—Ib. p. 64.

This objection being fatal, of course this survey was not adopted by the court, but was rejected

by common consent, and it is not now insisted upon here.

3. THE STRATTON SURVEY.—This is the third and last of these official surveys which it will be necessary to consider.

To this survey exception was filed by the claimant, on the ground that it "locates this [their] claim, or a large portion thereof, *within and upon the hills adjoining, instead of completing* the quantity confirmed to these claimants by *including lands to the south of the Milpitas creek.*"—Ib., p. 62.

Testimony was again taken by the respective parties *for* and *against* this survey; but the court finding it made, "as near as may be," in accordance with its new order of survey, rejected. by its decree of Sept. 8, 1863, the Healy, and adopted the Stratton survey.—Printed record, p. 88.

The practical result of this survey, so far as it relates to the boundary between the Alviso ranch on the north, and the Berryesa ranch on the south, was the establishment of a kind of *compromise line*, ignoring, on the one side, the claim of the intervenors in behalf of the Berryesa ranch, that the Milpitas creek was its long-established northern boundary; yet, conceding it so far as not to include its homestead within the boundaries of the Alviso ranch, and making compensation to the claimant for the deficiency of quantity south of the Milpitas creek, by allowing the deficiency to be made up by including a portion of foot-hills of the Sierra.

With this result the officers of the government were satisfied, and consequently took no appeal. The intervenors on behalf of the Berryesa grant, altho' they felt themselves injured by the survey and its confirmation, (inasmuch as it included a part of their land south of the Mlpitas creek,) in the hope of ending the controversy, took no appeal. But the claimant, on the contrary, acting in a different spirit, and determined if possible to have the whole of his land

located *in the valley*, took the present appeal. In this aspect of the case, it is a misfortune that the intervenor did not also appeal, (Chittenden *vs.* Brewster, 2 Wallace, U. S. R., p. 196,) in order that the error committed against them might be corrected, as the result of the examination of the case on its merits.

At the December term, 1866, the appeal was dismissed for want of a "citation."—5 Wallace, U. S. R., p. 824.

At the last term, however, it was restored to the docket, by order of the court, for the reasons stated—6 ib., p. 457—and it must now be disposed of on its merits.

ARGUMENT FOR THE UNITED STATES.

This appeal by the claimant necessarily raises the question *de novo* as to the principles on which the survey of the Alviso grant ought to have been made, and will therefore involve a full consideration of the whole evidence in the case.

In this appeal the attitude of the claimant is *aggressive*; on the contrary, that of the United States is simply *defensive* of the survey as it stands; but in making that defence it will be allowable to make it *offensive*, as well as *defensive*.

We propose, therefore, to maintain these two propositions:

I. That upon the preponderance of the evidence in the case *the Milpitas creek was the practically recognized and established boundary* between the Alviso grant, on the one side, and the Berryesa grant on the other side of that stream; *that the present survey gives the claimant land south of that creek* to which he had no just claim; and that, therefore, he ought to be satisfied with the southern boundary of the survey as it stands.

This is the *offensive* branch of the defence.

But, failing in establishing this first proposition,

and assuming, as was done by the court below, that the survey must be governed mainly by the indications of diseños, then we maintain:

II. That in view of the difficulties of the whole case, the confirmed survey is at least *substantially correct*, and that therefore it ought not to be disturbed.

This is the strictly *defensive* branch of the defence.

The difficulty in this case arises from two causes: 1st. The deficiency of *valley land* in the vicinity of the Alviso grant to satisfy its demands, consistently with the equal rights of other adjoining grants. 2nd. The vagueness and indefiniteness of the boundaries of the Alviso grant. No boundaries are specified in the grants, except by way of reference to the two accompanying diseños, which are very rude and imperfect in their delineation of localities. It combines the elements of two of the three classes of grants described by Mr. Justice Clifford in his elaborate opinion in the Higuera case, reported in 5 Wallace's U. S. R., p. 834. It is a "grant by quantity," and also "a grant of a certain place or rancho by a particular name, (Milpitas,) either with or *without specific boundaries*, where the donee is entitled to the tract according to the boundaries, if boundaries are given; if not, according to the extent and limits of the tract or rancho as shown by the proofs of settlement and possession."

Adopting the language of his honor in that case, with slight modifications, it may be added, "confessedly, the concession in this case, as originally made, was of the [two] latter classes, but the questions presented for decision under the exceptions to the survey have respect *to the decree of confirmation*, [as well as] to the concession or concessions made by the governor."

The two cases are very much alike in many respects, both being adjoining grants in the same locality, and having the same general history. See ib., p. 829, 830, 836. A knowledge of the one will serve to throw light on the questions involved in the other. It pre

sents the analogy of a dispute between Higuera and Alviso in regard to their boundary line on the north, such as now exists between Alviso and Berryesa on the south. The dispute in that case was settled by a compromise between the parties. That line crosses the Arroyo Los Coches, and is the northern line as shown by all the surveys in this case. The southern line adopted by the court below, in settlement of the conflicting claims of Alviso and Berryesa, is essentially of the same nature, and in like manner crosses the Milpitas creek, it being the southern line of the present survey.

The only boundary really in dispute in this case is the southern boundary of the Stratton survey.

Before proceeding to consider the question where, in view of the evidence, that boundary ought to have been placed, it will aid us materially, and contribute to a clear understanding of the case, if we free our minds from the obscurities thrown upon it by certain erroneous assumptions made by the counsel for the appellant.

1st. It is assumed that the claimant is entitled to *one square league* of land *in the valley*, at all events. On the contrary, it has already been shown, in the statement of the case, by a reference to the decrees of confirmation, that he is only entitled to that quantity *provided* that quantity shall be found to be contained within the true boundaries of the grant, and that consequently *the quantity* to be embraced in the survey is to be determined *by the boundaries*, rather than the boundaries determined *by the quantity*.

2nd. It is assumed that in making the survey, in order to include this assumed square league in the valley, a base line is to be measured southward a league in length, from a point in the southern boundary of the Higuera grant, north of Alviso's houses, near the foot-hills, and thence southward along the base of the said foot-hills, *substantially* in the manner shown by the Thompson survey.

This assumption, however, is based upon a mistaken reading of the diseños referred to in the grants. A correct reading of them shows that the league in length from north to south, along the base of the hills, which their scale of measurement shows, does not begin (as it is assumed) in the southern boundary of the Higuera grant, at a point a short distance north of Alviso's houses, but, on the contrary, that it begins at a point as far north as the north lines of the diseños, which lines, according to the same scale of measurement, are more than half a league north of Alviso's houses. More than half a league, in the length of this line, must, therefore, be deducted, if the measurement of it is to be begun at the said point, near Alviso's houses.

It is no doubt true that Alviso solicited a grant of all the land lying between the north and the south lines of the diseños; but it is also true that it included a large part of Higuera's land, and it not only appears by the evidence in the case, but it is well known from other sources, that a dispute existed between Higuera and Alviso as to the boundary line between them.—See. Martinez' test., printed record, p. 37, Q. & Ans. 4. Judge Hoffman's opinion, ib., p. 60, fol. 215, Higuera case, 5 Wallace, U. S. R., p. 829, 837, 838.

By reference to the record of the Higuera case for more detailed information, the nature of that dispute is briefly stated thus by Judge Felch, in delivering the opinion of the Land Board:

"In 1837 Higuera applied to Governor Alvarado, stating that he had obtained a grant from Sola, [April 30th, 1821,] and had been put in possession of the lands [Tularcitos,] as appeared by the documents above mentioned, which were therewith presented, and solicited the approbation and ratification of the same lands, together with an augmentation thereof, as represented in the map which he annexed, and which he had occupied more than twelve years. The petition alleges the existence of a difficulty between

the petitioner and one Jose Maria Alviso, and the governor ordered the proceedings to be stayed until the parties should come to terms on the subject. This difficulty having been settled before the alcalde on the 14th Feb., 1839, the governor made a decree of concession in favor of the petitioner. All the papers were delivered to the party in interest, and are now produced in evidence of his right to the land."—Printed record in Higuera *vs.* United States, p. 18.

The documents referred to above are these. Higuera, in his petition to Gov. Alvarado, after stating the first grant by Sola, says: "But having been informed *that unknowingly part of my land has been granted to Jose Maria Alviso*, I beg your excellency to be pleased to take my request in consideration, and that *said tract, such as represented in the map, may be granted to me*, holding the same by right of occupation, as mentioned before, since more than twelve years," &c.

On this petition appears the following marginal order :

"MONTEREY, *Sept.* 23, 1837.

"The possession asked by Alviso will be suspended until the agreement of the one and the other of the parties.

(Signed) "ALVARADO."

Afterwards the following order was made in answer to Higuera's petition :

"MONTEREY, *Feb.* 14, 1839.

"This government having been informed that the interested petitioner has settled with his neighbor, Jose Alviso, the difficulties which had occurred, and for the reason of which the possession of the land asked for by Alviso was suspended by decree of 23d of Sept., 1837, and considering the long enjoyment and quiet occupation for so many years by Jose Hig-

uera of the land he asks for, *I have acceded to his former petition, granting him the ownership of the augmentation of land he asks for*, which by virtue of the decree shall be considered as annexed to the former grant made by his excellency the governor, Don Pablo Vicente de Sola.

(Signed) "ALVARADO."

Ib., p. 15.

The *extent* of the *interference* of the Alviso with the Higuera claim may be judged of by comparing their respective diseños, and also by comparing them with the topographical map made by Stratton. The Higuera claim, as shown by the Higuera diseños, is essentially the same as that shown by the southern boundary of the Tularcitos ranch on Stratton's map, and by all the other surveys in the case. This boundary will be found to be far south of the "Linea Divisoria," and lying between it and arroyo, which is identified as the "Los Coches." To the north and east of the "Linea Divisoria" there is a large triangular piece of land, whose eastern side, as before stated, is, according to the diseno, at least half a league long. When extended eastward to the base of the "Lomas Altas," as it must be in order to include the Alviso houses, the quantity of land included is still greater.

It will not be argued that the "Linea Divisoria" was intended to be the northern boundary of the Alviso grant, because on the second diseno, according to which an extension of the Alviso grant was made, the same north line is extended directly westward from "A" to "B," so as thereby to include the new grant made on the west, thus making the north line a direct east and west line. On the second diseño, it is true, the "Linea Divisoria" is omitted, but a tree is made to stand for "the limits of the land of the mission of San Jose," in the same way as in the first diseno, at the point where those two lines intersected. But this point need not be argued, as it is admitted

by the appellant's brief that the "Linea Divisoria" was not and was *not intended* to be the *northern boundary* of the Alviso diseño. It is clear, therefore, that all the Higuera land included in the Alviso diseños, lying south of their north lines, must be deducted in measuring the league in length from north to south, which is called for by them; and that, therefore, it is erroneous to assume that the initial point of the survey of the eastern boundary must begin in the southern boundary of the Higuera grant, and be extended southward a league in length from that point. What has been lost above in the controversy with Higuera cannot be gained below in the controversy with Berryesa. He must take such quantity, *less than a league in length, as remains*, after that deduction. When this is done the eastern boundary cannot possibly be carried *further* south than the southern line of the confirmed survey.

3d. It is also assumed that the eastern boundary of the Alviso grant, according to the diseños, lies *at a distance* from the "Lomas Altas," or Main Ridge, viz, at the place indicated by the north and south line of the disenos which intersects the northern boundary line in each, to the eastward of the compass mark of the first diseno.

This assumption is proved to be erroneous by two decisive indications:

1st. By the fact before mentioned, that this assumed line, if extended southward, would exclude from the grant Alviso's houses. 2nd. By the fact that the boundary line toward the south, "Lindero al Sur," as shown by the first diseno, extends *beyond* the said assumed eastern boundary, and connects with a line drawn at the base of the "Lomas Altas," or Main Ridge, and lying further eastward *beyond* Alviso's houses.

4th. It is further assumed, "That it does not appear anywhere in the record that Berryesa *had any*

grant; and if he had, that there is *no evidence of its confirmation.*"—Appellant's brief, p.

The act of June 14, 1860, (Stat. Laws of 1859–60, p. 33, &c., as expounded by Mr. Justice Miller, in the Estudillo case, 1 Wallace's U. S. R., 719, &c.,) "divides those who may contest the survey into two classes—those who claim *through* or *under the United States* and *those who do not*. All who claim through the United States, whether by "pre-emption settlement or any other right or title," constitute one class, who must appear by her attorney and in her name. * * *

"Who constitute the other class? They must be those who claim under rights or grants, more or less perfect, *derived from the Mexican government.* This class consists of persons having *claims confirmed*, or otherwise, *the location of which would interfere with the survey, which is the subject of contestation.*

"As to this class of persons the government has, by its solemn treaty, bound itself to protect their rights. It is therefore eminently proper that they should be permitted to assert their rights *in their own name*, and *by such counsel as they may choose to employ.* The statute gives them this privilege, and *if* the *court below has found that such persons had an interest in the contest, then it gives them the additional right of an appeal to this court.*"—Ib., 720.

That Berryesa and his assignees belong to this second class, is a fact found by the court below in this case, *as the necessary basis* of the right conceded to them under the survey law to intervene in their own name, by their own counsel, for the protection of their rights, to take testimony, and to contest the "Thompson survey," which was rejected.—See printed record, p. 26, 30.

The record in this case clearly shows that these facts, viz, that Berryesa was a *grantee* of the Mexican government, and a *confirmee* under the acts of Congress, were proved *in the usual preliminary way*, and

according to the established practice in all survey cases arising under the survey act. It shows that similar facts were proved in the same way, in the proceedings to found the intervention of Chas. Allen and others in this very case, for the protection of their rights in regard to the confirmed grant of the "Rincon de los Esteros."—Printed record, p. 63. The appellant did not then, and does not now, deny those facts, nor dispute the validity of their proof, in regard to that intervention.—Ib., p. 64. Appellant's brief, p.

Neither did he do so in the court below, (Printed Record, p. 26, 30,) nor can he do so here, in regard to the Berryesa intervention.

These facts, as found by the court below, according to the true intent and meaning of the act of June 14, 1860, are *final and conclusive upon this court*, and upon both parties for all the purposes of this proceeding, and cannot, therefore, be disputed here by the appellant, at this late day, in this proceeding.

I. We are now prepared to examine our first proposition, in substance :

That the Milpitas creek was the recognized and established boundary on the south, between the Alviso and the Berryesa ranchos.

The oral testimony on this point, it is true, is somewhat conflicting, and for that reason it was hastily set aside and disregarded by the court, and the decision of the question as to the proper location of the southern boundary of the survey was made to depend *entirely* on the indications of the diseno. But in so doing we think the court committed two errors :

1st. It attributed to the diseños a greater accuracy than they are known to possess.

2d. It entirely disregarded the evidence on this question furnished by the map of the land of the pueblo of San Jose, made in 1836 or 1838, and thereby overlooked the strong corroborative evidence which it furnished in support of the testimony of the witnesses,

who testified that the Milpitas creek was the long-established and well-recognized boundary between the Alviso and Berryesa ranchos.

This map is of great value in this controversy, because it was made by Mexican authority more than thirty years ago, under the Mexican dominion, and long before the present controversy arose. The history of this map is given by Weeks in his cross-examination—printed record, p. 57–58—as follows, viz:

"Ques. 33. Do you recollect a map made somewhere about 1836 or 1837, showing the land claimed by the pueblo of San Jose? and if so, state fully what you know about it? Ans. I recollect a map drawn up about that time by Mr. Gulnac, showing the boundaries of the pueblo land, by order of the government, surveyed by a commission. I think it was later than 1836 or 1837. I was Mr. Gulnac's companion at the time the survey was made. I believe that original map is now in the United States Surveyor General's office for California. I was present and saw the map made. Q. 34. A copy of that map, certified by the United States Surveyor General, is now on file in this court, in the case of the United States *vs.* Jose Higuera, No. 228. Examine this copy now shown you, and state whether you recognize it as a copy of the original to which you have referred. Ans. I recognize this as a copy of the original to which I refer, with the exception of the blue shading and the red lines showing the Higuera ranch. Q. 35. Examine that portion of said map which shows the houses of Jose Higuera, Jose Maria Alviso, and Nicholas Berryesa, and state whether the position of those ranchos to each other is correctly laid down on it, *as the possession and occupation of them were understood to be at the time this map was made by yourself and the residents of that part of the country generally?* Ans. *It is.* The Arroyo Penetencia was always considered the western boundary of all these ranchos, so far as I am aware. The arroyo between Berryesa

and Alviso, I have always known as Milpitas. That between Alviso and Higuera was always called San Miguel; higher up in the mountains it is called Las Coches. The place called Tularcitos on this map is a mile more or less northeast of Alviso's house."

This map shows just what would naturally be expected—that in a wild country, and in a rude and primitive condition of society, destitute of the means of making artificial demarcations of boundary by regular surveys, advantage would necessarily be taken of the natural monuments of boundary furnished by hills, mountains and streams; that accordingly these three grants were bounded either by the original grants or by subsequent adjustments of conflicting pretensions between the grantees, by the mountains and streams which included them; that the hills and mountains were their common boundary on the east, and the Penetencia creek their common boundary on the west; that the Higuera ranch was separated from the Alviso ranch on the north by the stream known as the Arroyo Las Coches; that the Alviso ranch was separated from the Berryesa ranch on the south by the stream known as the Milpitas creek; and that the Berryesa ranch in its turn was separated from the Pala ranch on the south by the arroyo known as the Aguage. The same general fact is shown by this map throughout, both in regard to grants north and south of the three original grants before named; and further, that the ranch houses are always within the boundaries of the grants.

In strict conformity with these general facts, and with the specific evidence furnished by this map, is the testimony of the Berryesa witnesses, who swore that the Milpitas creek was the admitted and well-established boundary between the Alviso and the Berryesa grants. *Peralta*, who was a cousin of both these grantees, (printed record, p. 34, ans. 2,) says, in ans. 5, p. 35: "The southern boundary of Jose Maria Alviso is the Arroyo to de las Milpitas, [and] a

line from where it ends to the Penetencia. Jose Maria Alviso himself told me two or three times. These are my means of information." "All three of these conversations took place before 1840."—Ib., p. 36, ans. 27.

Martinez swears: "I know from Alviso that the arroyo of Milpitas was the boundary between himself and his colindante, Nicholas Berryesa. I helped Alviso to found the ranch, and through him I became acquainted with these boundaries. He told me many a time where his boundaries were."—Ib., p. 37, ans. 5.

"Ques. 15. Who occupied first, Alviso on the north of the Milpitas, or Berryesa on the south? Ans. Alviso occupied first. Berryesa then, with his (Alviso's) consent, asked Alviso how far his land extended, and *Alviso said as far as the Milpitas.* Berryesa wanted to know how far Alviso's land extended, so he (Berryesa) should not prejudice Alviso. *Berryesa then made his petition, and Alviso himself presented it to the Alcalde.*"—Ib; p. 38.

"Ques. 38. What tract of land did the ayuntamiento of San Jose authorize Berryesa to occupy? What was its extent, and what were the boundaries? Ans. From the Arroyo Milpitas to the south as far as the Aguage, to the Sausal on the west, and to the hills on the east. I know this from the Berryesas themselves. Ans. 40. I know this from Nicholas Berryesa, as well as Alviso. Both of them have told me about the limits of Berryesa."—See also ans. 41, p. 40; ans. 46, p. 41; ans. 56, p. 42. Berryesa has continued to occupy the land south of the Milpitas creek since before 1833. Ans. 13, p. 38; ans. 52 to 54; ans. 57 and 58, p. 42.

Weeks—an intelligent American, who assisted in making the survey of the lands of the pueblo of San Jose in 1836 or 1838, and who had had custody of the archives of the pueblo of San Jose immediately after the American occupation—testifies to the same effect; that he was acquainted with the ranchos of Alviso and

Berryesa; that he knew the rancho of the latter since it was first settled—he thinks in 1834—that he had lived on both the ranchos; on the Alviso ranch about 1835, when Mr. Forbes was farming there; and on the Berryesa ranch about 1836 or 1837, when Mr. Gulnac was carrying on the distillery business there; that he had been often to both those places before and since, and has always been acquainted with the ranchos and their occupants; that he had always learned that the creek of Milpitas was the boundary between them; Alviso claimed south to the Milpitas creek and Berryesa claimed from the Milpitas creek to the Aguage creek.—Printed record, p. 55.

Ques. 11. How have you learned that this was the boundary? Ans. Mr. Berryesa informing me so himself many years back, and I believe Mr. Alviso informed me so himself, and by each party occupying the land adjacent to the creek for agricultural purposes and building, and by each party having peaceable possession; and I never heard any dispute about it while Alviso lived.

12. Where did Mr. Gulnac live? Ans. Mr. Gulnac lived near the Milpitas creek, near where Mr. Berryesa's first residence was. Mr. Gulnac had sowing fields on the banks of the creek. He had his distillery some two or three hundred yards from the banks of the creek, up near the foot of the hill.

13. By whose permission did Mr. Gulnac occupy that place? Ans. Mr. Gulnac occupied that place, by permission of Mr. Berryesa, *as his tenant.*

14. Who had the possession and was recognized as the owner of the land on the south side of the Milpitas creek? Ans. Nicholas Berryesa and family.

15. Was his possession, so long as you have known the place, actual and exclusive as against Alviso, and those holding under him, on the south side of the creek? Ans. I always understood the south side of the creek to be in the possession of the Berryesas,

where their residences and improvements have been, and I never knew of any interference with their possession until a few days back.

16. State whether Nicholas Berryesa has been upon his said rancho *continuously*, from the time when he first took possession of it, up to the occupation of this country by the Americans. Ans. *He has continuously up to the present time.*

17. Has he a family? Ans. Yes, sir; a large one. I think there must be some ten or twelve children.

18. Where were they born and brought up? Ans. Some of them were born on the rancho, and they have all been brought up there.

19. Did Berryesa have considerable fields on the rancho? Ans. As much so as any other ranchero—enough for his own use and some to spare.

20. On what part of the rancho were these sowing fields? Ans. They were bordering on the creek at different places, from the foot-hills to where the creek spreads out.

21. Did Berryesa have cattle and horses? If so, where did he pasture them? Ans. He had, and he pastured them on the ranch. The corral was close by his houses. He had pretty large herds of cattle and horses; but I don't know how many.

22. How did Alviso occupy his rancho? Ans. In the same manner as Berryesa.

23. Where were his sowing fields? Ans. Bordering on the San Miguel creek, close to his houses.

24. Where did he pasture his cattle? Ans. Between the creeks. He had the corral close to his house. His cattle ranged to the top of the hills.

25. How far south did the exclusive possession of Berryesa extend? Ans. No further than the Aguage creek—up to the Aguage creek.—Printed record, p. 56.

Francisco C. Berryesa, a son of Nicholas Berryesa, who was 35 years old and had been on the rancho 26

years, testifies to essentially the same facts in regard to the Milpitas creek, as the boundary between Alviso and Berryesa; to the exclusive possession of Berryesa south of that creek, and to the admission of Alviso that such was the boundary.—Printed record, pp. 58, 59.

Thomas Campbell, another intelligent American witness, testifies he has been in California since 1846, and in the San Jose valley since March, 1847; that he knows the Alviso ranch, and first became acquainted with it in July, 1847; that he was then acting as chain-carrier for the surveyor, Mr. Hutton, who was surveying the pueblo lands, now known as the 500-acre lots of the pueblo of San Jose; that the rancheros owning lands adjoining to those pueblo lands were notified by Burton, the alcalde of San Jose, to show the lines of their ranchos to the surveyor; that in running on the west side of the Milpitas or Alviso ranch, Alcalde Burton showed the west line for Alviso, saying that he was authorized by Alviso to show these lines; that Nicholas Berryesa was present at the time, and that he and Burton pointed out the place on the west line which divided the ranchos of Alviso and Berryesa.

Ques. 6. Describe by natural objects, if you can, the course of the west line of both ranchos and the place pointed out as dividing one from the other. Ans. 6. In starting from the south side of the Berryesa, on the Aguage creek, we run in a northwestward direction to a place apparently where the Milpitas creek had overflowed or scattered, forming a gravel bed. On the north side of that bed of gravel the water had apparently concentrated, and cut out a channel of considerable depth. At the head or south end of that channel was the corner shown to us by Nicholas Berryesa and Alcalde Burton as the southwest corner of the Alviso grant, and northwest corner of the Nicholas Berryesa grant. From that point, in

running the west line of the Alviso grant, we ran more to the left in running a northwest course than we had in running the west line of the Berryesa, passing through a willow grove, from the willow grove to the Penetencia to a tree with a cross. I can't recollect whether the tree was a live oak or a sycamore. * * * Did not hear Burton's statement at the time of the survey, that he was authorized by Alviso to show the lines of Alviso's ranch, disputed by any person present at the time.

In further confirmation of the fact that the Milpitas creek was the boundary between the Alviso and the Berryesa ranchos, is the decisive fact, testified to by all the witnesses who spoke on the point, and shown by all the maps and surveys in the case, *that Berryesa's houses and settlement were a short distance south of the Milpitas creek*, thereby excluding the idea that the Alviso ranch could extend below that creek and thereby include the houses, corrals, and cultivated fields of the Berryesa grant within the boundaries of the Alviso grant.

Now what is the substance of the testimony on the other side?

It may all be summed up in these two statements: 1st. That Berryesa occupied the land south of the Milpitas creek by *the permission of Alviso*. This is sworn to by Francisco Alviso, an ignorant marksman and brother of the claimant, (printed record p. 32, ans. 19); by De la Rosa, a California vaquero, whose knowledge of these ranchos only began in 1849, (ib., p. 47, ans. 2,) and purports to be derived solely for the exparte statement of Alviso, not made in the presence of Berryesa, (Ib., p. 48 '9, ans. 15 and 16); and by Chaboya and Mesa, who overshoot the mark so far as to swear that Alviso claimed the *Palo ranch* as his southern boundary, and that it was his southern boundary. (Ib., p. 73, ans. 10, 13.) (Ib., p. 52, ans. 19.) Mesa also swears that he heard this permission given to Berryesa at the time posses-

sion of the Pala ranch was given to Joaquin Higuera, (p. 50, ans. 485.) But Berryesa is known to have been in possession long before that event. Mesa admits, however, on cross-examination, that he did not know, and had never heard that Berryesa's possession of the land between the Palo rancho and Alviso's land began as Alviso's did, under the authority of the pueblo of San Jose. If he had known this fact before he began his testimony, it would probably have been different.

The statement to which these witnesses swear is so improbable and so flatly contradicted by all the more reliable testimony in the case, that if not wilfully false it can only be reconciled by regarding it as a *perverted and mistaken* version of the fact mentioned by Martinez, (p. 38, ans. 15,) viz:, "That Alviso occupied first. Berryesa then, *with his (Alviso's) consent*, asked Alviso how far his land extended, and Alviso said *as far as the Milpitas*. Berryesa wanted to know how far Alviso's land extended, so he (Berryesa) should not prejudice Alviso. *Berryesa then made his petition, and Alviso himself presented it to the alcalde.*"

2nd. That Alviso occupied the land south of the Milpitas creek with his cattle, and held rodeos there.

The same witnesses testify to these facts also. Printed record Alviso, p. 32, ans. 20, 21. De la Rosa, ib., p. 47, 48, ans. 5, 11; p. 49, ans. 19, 20; Pedro Mesa, ib., p. 50, '1, ans. 7, 10. Juan Bernal, ib., p. 53, ans. 5, 8; Francisco Bernal, ib., p. 54, ans. 5, 9.

But these statements, even admitting that they have any foundation in fact, are *equivocal in their nature*, and furnish no satisfactory evidence of boundary, because the cattle of Alviso may have strayed upon, or may have been driven upon Berryesa's land, and rodeos also may have been held there, either by his presumed license or by his actual permission, of which the witnesses had no knowledge. This is the only way in

which their testimony can be reconciled with the contrary testimony and with well-established facts.

But this testimony, if not reconciled in this way, *proves too much*. It proves that Berryesa had *no title* to any land south of the Milpitas creek. The contrary of this, however, as we have seen, has been judicially determined, and consequently this testimony is entitled to no more consideration in regard to the question of *boundary* than it is in regard to the question of *title*, because it begins by denying the title to the co-terminous land, one of whose boundaries is to be determined.

From this review of the nature and character of the testimony offered in support of the pretension of Alviso to cross the Milpitas creek, it is evident that it is entitled to little or no weight, when compared with the testimony of the contrary witnesses. The latter, in fact, are more intelligent, and are entitled to more credit, because corroborated: 1st. By the inherent probabilities on the subject of boundary, arising from the necessity for natural boundaries in such a country. 2d. By the evidence furnished by the map of the lands of the pueblo of San Jose made more than 30 years ago. And 3d. By the inherent improbability, if not absurdity, of supposing that the homestead of an adjoining and confirmed grant, which had been occupied for more than thirty years, should not be found within its own boundaries, but within those of an adjacent grant.

If this conclusion is supported by the better reason, then it follows that the Milpitas creek was the southern boundary of the Alviso grant; that the southern boundary of the confirmed survey gives the claimant land south of that boundary to which he has no just title, and that therefore he has no just cause of complaint with the southern boundary of that survey.

II. The second proposition is: That in view of the difficulties of the whole case, the confirmed survey is,

at least, *substantially correct*, and that therefore it ought not to be disturbed.

In support of this proposition, the opinion of the court in rejecting the "Thompson survey" is as able an argument as can be offered, and to it the court is respectfully referred.—Printed record, p. 59—61.

A few additional considerations, however, may be added, growing out of the surveys made and the testimony taken after the delivery of that opinion.

The northern and western boundaries of the Alviso grant are fixed beyond dispute by the confirmed surveys of the Higuera and White grants.

Two additional points are fixed by the surveys and testimony, viz: the locality of the Montecito and the locality of Berryesa's homestead and improvements.

1st. The locality of the "Montecito."

This is a point called for by the diseño, and fixes the southern terminus of the western boundary.

Great confusion arises on these California cases, from the fact that the same natural object is known to different persons by different names. An example of this is furnished in the testimony on this case in regard to the "Montecito." By Martinez it is called the "Monte de los Irrirrices," (printed record, p. 37, ans. 6,) and by the same witness "a little grove, near the Irrirrices," (ib., p. 42, ans. 55.) By Campbell it is called "the willow grove," (ib., p. 44, ans. 7, 10.) It is called the "Montecito or thicket," by Murphy, (ib., p. 66, ans. 3, 5, 6.) By Adams, (ib., p. 68, ans. 2, 3, & 12. By Robinson, ib., p. 69, ans. 5, 14, 15. By Munoz, ib., p. 71, ans. 4, 9. By Chaboya, ib., p. 72, ans. 3, &c.

The dispute among the witnesses is, as to what constituted part of the Montecito—whether certain bushes and underbrush north and south of it, constituted an integral part of it. Its extent north and south varies in the opinion of the different witnesses, according as this underbrush is included or excluded as a part of the Montecito. But notwithstanding this conflict of testi-

mony in regard to the *extent* of the Montecito, its locality for all purposes of boundary in this case, may be regarded as fixed and certain.

Four separate surveys of the Alviso grant have been made, all calling for the "Montecito" as a boundary, and they all agree in fixing the Montecito, and consequently its centre, at the same points. See the Thompson survey, Stratton's topographical survey, and the two official surveys of Healy and Stratton; see also Healy's testimony as to the agreement of the last two surveys on this point.—Printed Record, p. 74, ans. 8. This agreement of different surveys, fixes the southern terminus of the western boundary, and at the same time, the initial point of the southern boundary.

2d. The locality of Berryesa's homestead and improvements.

That Berryesa had a grant of some kind, as we have already seen, has been judicially determined, by the fact that he has been admitted as an intervenor to contest the validity of the "Thompson survey;" and that he occupied the land south of the Milpitas creek for the period of thirty years and more, has already been shown by an examination of the testimony in the case.

But where did he occupy? Where were his homestead and improvements—the best possible monuments and land marks of occupancy and claim of title?

These questions are all satisfactorily answered, by all the surveys, without the slightest disagreement.

The location of Berryesa's house is laid down at the same point on the maps of the Thompson and Stratton topographical surveys, but is included by them within the limits of the Alviso grant. It is also laid down at the same point on the map of the Stratton official survey, but it is excluded from the boundary of the Alviso grant. Altho' not laid down upon the map of Healy's survey, yet Healy was examined as a

witness in regard to its location with reference to his survey.

Q. 25. Is the house of Nicholas Berryesa included within your survey?

A. *It is. The old ranch house.*

26. Is it included within Stratton's survey?

A. *It is not.* Printed record, p. 76.

In support of our first proposition we have argued and shown reasons why the southern boundary of the Alviso grant should not be carried south of the line of the Milpitas creek extended westward to the Penetencia creek. But on that point we have been overruled, and in favor of the rights of the claimant it has been carried further south—to the Montecito. Now the Montecito is not only the southwestern angle boundary of the Alviso grant, but it is at the same time the northwestern angle boundary of the Berryesa grant. Starting from that point, then, a dividing line has to be run between two adjacent grants, and the question is, how shall it be run; shall it be run on such a way as to include the homestead of Berryesa in the Alviso grant, and thus include the two homesteads of the two separate grants within the limits of one of them, or shall it be so run as to exclude the homestead of Berryesa from the Alviso grant, and thus leave the homestead of each grant within its own limits? This is a question of common sense, and the court below has answered it by the application of common-sense principles, which have necessarily worked out the common-sense result shown by the confirmed survey.

Stratton, the surveyor, was examined after the survey, and his testimony is important in this connection:

"Q. 3. In running the southern line of your survey, how did you construe the qualification, 'as near as may be,' found in the order directing a new survey?

A. It was undoubtedly intended to cover the ground of any discrepancy met with in the following the

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"Q. 3. In running the southern line of your survey, how did you construe the qualification, 'as near as may be,' found in the order directing a new survey?

A. It was undoubtedly intended to cover the ground of any discrepancy met with in the following the

three calls in the description, which are the centre of the Montecito—the general line, the base of the hills, and the point at their base, a short distance south of the Milpitas creek where it issues from the mountains. It so happens that the three calls do exactly agree, as the southerly boundary of my survey runs exactly at *right angles to the general line of the base of the mountains*, passing exactly through the centre of the Montecito, and cutting the line of the base of the mountains exactly at the point indicated on the copy of the diseno furnished me by the U. S. Surveyor General." (Printed record, p. 65.)

The order of survey, of which the confirmed survey is but the practical application, was conceived in the spirit which received the sanction of this court in the Higuera case, 5 Wallace, U. S. R., p. 834–835, and this survey must be sustained for like reasons.

The objection made by claimant, that the southern line of the survey crosses the Milpitas creek, is the necessary consequence of two facts. The first is that in following the diseno against the evidence, which showed that the Milpitas creek was the established and recognized boundary between the two ranchos, the boundary was carried southward to the Montecito. This was an error of which we have complained. The second fact is that the course of the Milpitas creek is different from what it is represented on the diseno, (Healy's test; printed record, p. 76; ans. 20,) and that the crossing of that stream is necessary in order to get back and reach the point on the east, called for by the diseno. This is admitted by Healy, and also that the survey of Stratton is correct, if the diseno is taken as the guide. (Ib., ans. 21.)

But this objection is of minor importance compared with the paramount obligation of so running the dividing line as not to include Berryesa's homestead in the Alviso grant. This the confirmed survey accomplishes; the others do not.

The truth is, as the conclusion of the whole matter,

that the claimant has no real cause of complaint, and that he has really fared better than he had a right to expect.

He seems to be actuated by no principle but a decided preference for valley land.

He began by attempting to appropriate the valley land of Higuera on the north. In that he failed.

He next attempted to appropriate a great part of the valley land of Berryesa on the south, by the "Thompson survey." In that he failed also.

His next attempt was to cross the Penetencia creek, and appropriate a large part of the land of the "Rincon de los Estero," together with a smaller part of Berryesa's land, as shown by the "Healy survey." Here his failure was more ignominious than before, as he was obliged to come into court and file objections to the confirmation of his own survey.

By the confirmed survey he has already a part of Berryesa's land, as we think we have shown; but he is not satisfied—he wants more. By reference to the order of confirmation we have shown that he is not entitled to a square league of land, unless it is found to be contained within the boundaries of his grant. Upon his own principles he is not entitled to the land on which his own house stands; nor to any of the land east of it which is included in the confirmed survey. But, hemmed in as he was, on the north, on the west, and on the south, by other grants, and cut off by his own principles from any claim to land in the foot-hills on the east, his boundaries would not contain a square league, and therefore under the decree he was entitled to no more land than was to be found within those boundaries. Nevertheless, the officers of the government and the court below have treated him with great liberality, and have recognized his claim to a full square league. There being no conflicting grant in the east, he has been allowed to go into the foot-hills for quantity. The confirmed survey gives him more than he is strictly entitled to—a

full league of land—and all his objections, when reduced to a single point, amount to this: that he is dissatisfied because a full square league of land has not been measured off to him—*in the valley*—regardless of the equal rights of co-terminous proprietors. This is both unreasonable and unjust.

On the grounds of both our main propositions, therefore, we insist that the judgment of the court below should be affirmed.

WM. M. EVARTS,
Att'y General.
JOHN A. WILLS,
Special Counsel.